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THE  
BILLS OF SALE ACTS  
1878 AND 1882.



THE  
BILLS OF SALE ACTS  
1878 AND 1882.

WITH NOTES SHOWING THE ALTERATION IN THE LAW  
AS AFFECTED BY THE ACT OF 1882,

AND APPENDICES

OF

STATUTES, RULES OF COURT, FORMS AND PRECEDENTS.

BY

MICHAEL G. GUIRY, LL.B.

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LONDON:  
WATERLOW AND SONS LIMITED,  
LONDON WALL, E.C.

1882

LONDON :  
WATERLOW AND SONS LIMITED,  
LONDON WALL.

## INTRODUCTION.

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**A**N attempt is made in the following pages to furnish the legal profession with a useful hand-book in offices and courts where a law library is not at hand. The writer has found in practice that although quotations from text-books may be faithful representations of the expressions of learned judges, yet, since the *ipsissima verba* of the judgments are not given, courts refuse to act upon the authority of such quotations. As far as possible, therefore, the facts of cases are here given, together with such portions of judgments as are relevant; and it is thereby hoped that the book may be more useful to practitioners than if it contained in a sentence the result of each case. Of course this plan is necessarily restricted, but it has been adopted as far as possible where principles have to be explained.

It may be well here to state shortly the alterations made in the law by the Act of 1882. The first material change is to limit its application to bills of sale given only by way of security for the payment of money. It further provides that a schedule must be annexed to every bill of sale to which it applies, otherwise, save in the case of fixtures brought by way of substitution for fixtures mentioned in the schedule, and growing crops, the bill of sale shall be void except as against the grantor. It also limits the power of seizure to the cases specified in section seven, gives a form in accordance with

which bills of sale must be framed, and repeals the provision in the Act of 1878 for attestation and explanation by a solicitor, substituting therefor attestation by any person not being a party to the bill of sale. Section eleven provides for local registration after bills of sale have in the first instance been registered at the Central Office. Under the new Act, bills of sale, given in consideration of any sum under £30, shall be void; and chattels seized cannot be removed or sold until after the expiration of five days from the day of seizure, thereby giving time for an application to the court to restrain the grantee from removing or selling, as in section seven provided. It also repeals section twenty of the Act of 1878, which enacted that chattels comprised in a bill of sale should not be deemed to be in the order and disposition of the grantor within the meaning of the Bankruptcy Act 1869. The last material alteration is that bills of sale shall not protect chattels against poor and parochial rates. The new Act is referred to and quoted in the notes to the Act of 1878, thereby enabling the reader to see as he goes along how the law as it existed heretofore is affected.

M. G. G.

1, TEMPLE GARDENS, TEMPLE, E.C.,  
*August, 1882.*

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# THE BILLS OF SALE ACTS, 1878 AND 1882.

## THE BILLS OF SALE ACT, 1878.

41 & 42 VICT. CAP. 31.

*An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.*

[22nd July, 1878.]

**W**HEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels : Act of 1878,  
sec. 4.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Bills of Sale Act, Short title. 1878.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

3. This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Sections 2 & 3 are qualified by section 7 *post* p. 20, whereby the present Act applies to the construction of "*all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.*" Retrospective as to deeds, including fixtures and growing crops.

Act of 1878, Section 11 *post* p. 48 should also be read here. It provides  
sec. 4. that the registration of all bills of sale, no matter when  
executed, must be renewed every five years.

As to registra-  
tion of bills of  
sale executed  
before passing  
of this Act.

The Act of 1882 comes into operation on November 1st, 1882, which is the date therein referred to as the commencement of that Act. The following is part of section 3 of that Act.

Act of 1882,  
sec. 3.

*"The Bills of Sale Act, 1878, is hereinafter referred to as 'the principal Act,' and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise."*

Interpreta-  
tion of terms.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale: Personal chattels shall be deemed to be in the "apparent possession"

of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :

Act of 1878.  
sec. 4.  
—

“ Prescribed ” means prescribed by rules made under the provisions of this Act.

The definition here given of a bill of sale is the same as that given in the Act of 1854 (17 & 18 Vict. c. 36), except that in this Act there are the additional words “ inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods,” and, “ and also any agreement whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon shall be conferred.” It will be seen later on what classes of cases these new words are meant to meet.

Difference  
between this  
and former  
Act.

A bill of sale is one or more documents whereby a person having property in personal chattels sells or charges, or agrees to sell or charge the same without delivery, or which is intended to be a record of such sale or charge. It may be comprised in more than one document. *Ex p. Odell re Walden*, 10 Ch. D. 76; 48 L. J. Bank. 1; 39 L. T. 333; 27 W. R. 274.

Bill of sale.

By section 10 *post* p. 32, an assignment or transfer of a bill of sale need not be registered under this Act.

It was held in *Hale v. Metropolitan Saloon Omnibus Company*, 28 L. J. Ch. 777; 4 Drew. 492; 7 W. R. 316, that a receipt for the purchase money of goods was not a bill of sale within the meaning of the Bills of Sale Act then in force (17 & 18 Vict. c. 36). Although this case was not cited, the same principle was adopted in *Allsop v. Day*, 31 L. J. Ex. 105; 7 H. & N. 457; 10 W. R. 135; 5 L. T. 320, where the following document was held not to be a bill of sale: “ Received of J. D. and C. J. the trustees under the deed of settlement for the benefit of my wife the sum of £93. 6s. 6d. for the purchase of my household goods and effects mentioned in the enclosed inventory and valuation as purchased this day by J. D. and C. J. as trustees named in the deed of settlement and empowered to purchase by such deed.” These cases were followed (see *Byerley v. Prevost*, L. R. 6 C. P. 144) for some considerable time, but at length in *Ex p. Odell re Walden*, 10 Ch. D. 76; 48 L. J. Bank. 1; 39 L. T. 333; 27 W. R. 274, *James L. J.* speaking of *Allsop v. Day* said, “ if it is necessary I am bound to say that I should not be prepared to affirm that decision.” In *Ex p. Cooper re Baum*, 10 Ch. D. 313; 48 L. J. Bank. 40; 39 L.

Receipt for  
purchase  
money of  
goods with  
inventory.

Act of 1878,  
sec. 4.

Receipt for  
purchase  
money, &c.

T. 521; 27 W.R. 298, Baum sold the furniture of his dwelling-house to Isaacs, and a document was prepared headed "Inventory of furniture, fixtures and effects at No. 2, Clyde Street, South Kensington, the property of John Baum, Esq., taken this 6th day of May, 1876." This was followed by an inventory, and at the foot was the following receipt, "Received this 26th day of May, 1876, of and from Mr. Alexander Isaacs the sum of £600, being the amount of purchase money in respect of the goods, chattels, plate, linen, and effects mentioned in the foregoing inventory. (Signed) John Baum." This document was held to be a bill of sale, and *Jessel M.R.* explains in *Woodgate v. Godfrey*, 5 Ex. D. 24; 49 L. J. Ex. 1; 42 L. T. 34; 28 W. R. 88, what he considers to be the principle upon which the decision *In re Baum* rested. He says "We have the benefit of some remarks made by *Thesiger L.J.* as to that case, and those remarks show that the decision may be explained upon an intelligible principle. That principle is that independently of the document there was no sale of the goods, that there was one transaction constituted by the inventory and the receipt thereto attached, and that if there had been no document there would have been no transaction." This judgment was delivered after the passing of the Act of 1878 and before its coming into operation, and *Bramwell L.J.* in the same case says "Upon the new statute a question may arise whether its provisions may extend to a mere receipt for a sum of money which does not mention the consideration for payment, but which is in truth an acknowledgment for the price of goods sold and left in the possession of the vendor." This learned Judge subsequently expressed his opinion on the meaning of the Act of 1878 in *Marsden v. Meadows*, 7 Q. B. D. 80; 50 L. J. Q. B. 536; 45 L. T. 301; 29 W. R. 816; where he said "I think that the proper interpretation of this enactment is that when the receipt is intended to be the instrument of transfer or a record of the transaction, then it is to be registered and attested under the Act; but that where there is no evidence of any intention of that kind it shall be unnecessary to register a receipt signed by the seller of the goods." In the same case *Cotton L.J.* after having referred to sections 3, 4, 5, and 8, said "These provisions in my opinion lead to the conclusion that a document to be a bill of sale to which the Act applies must be one on which the title of the transferee of the goods depends either as the actual transfer of the property, or an agreement to transfer, or as a muniment or document of title taken, to use an expression found in some of the cases, at the time as a record of the transaction."

When a bill of  
sale under this  
Act per *Bram-*  
*well, L. J.*

and per *Cotton,*  
*L. J.*



The facts of this case which is the last upon the subject, are as follows:—the sheriff, under a writ of *fi. fa.*, seized the whole of the goods, chattels, farm implements and other effects upon the premises of the defendant. The claimant agreed to purchase of the sheriff the whole of what had been seized for £65, and paid down a sum of £40, whereupon the sheriff gave the claimant possession of all the goods, and the claimant from that time paid the rent of the premises and sent his cattle there. He, however, allowed the defendant to occupy the premises and to use the furniture. Upon the day after the payment of the £40 the claimant sent a cheque for £25, the balance of the purchase money, to the sheriff, whereupon the sheriff sent to the claimant a schedule of the goods. The schedule was headed “Inventory of the goods at Mr. Meadows’ farm, Billericay, Essex”; the items were set out with the price opposite each, the total amounting to £65. With this schedule and pinned to it was the following receipt for the purchase money. “Received of Mr. J. Salmon the sum of £65 for valuation at Mr. Meadows’ farm, Billericay, Essex—John Ballard for Frederick Smee, January 17, 1879—£65.” This document, or rather these documents were held by the Court (*Cotton, Bramwell and Brett L.JJ.*) not to constitute a bill of sale. Along with this case must be read the case of *Brantom v. Griffiths*, 1 C. P. D. 349, affirmed on appeal 2 C. P. D. 212; 46 L. J. C. P. 408; 36 L. T. 4; 29 W. R. 313. In that case the plaintiff claimed the crops as against execution creditors under a number of documents almost identical in form, the following being one of them:—

“Miss A. Miles hereby agrees to sell to W. Brantom five acres of wheat, now standing on the Beeches, at the sum of £6 per acre, W. B. to cut and carry the corn any time he may require; and W. B. doth hereby agree to purchase the said five acres of corn as mentioned above on the above conditions.—A. MILES, W. BRANTOM.”

This document was held to be a bill of sale. *Brett L.J.* says there “It is argued for the plaintiff that they are not bills of sale, and do not come within the description of instruments mentioned in the 7th section. The contention is that there was a good verbal contract apart from the documents under which the property passed; and the documents do not constitute the contract itself, but are only evidence of it. It seems to me that although there may have been such a verbal contract, and although money may have been paid under it, and so a writing would not be essential, yet, if the terms of the contract are at the time, as here, reduced into writing and signed by the parties, and the writing con-

ACT OF 1878,  
sec. 4.

Facts of  
*Marsden v.*  
*Meadows.*

Where the  
terms of the  
contract are  
reduced into  
writing and  
signed and  
such terms  
pass the pro-  
perty, the  
document is a  
bill of sale.

Act of 1878, sec. 4. tains all the terms of the contract, and those terms are such as would pass the property in the subject matter of the contract, such a document is a transfer or assurance of personal chattels within the 7th section."

It may be well to compare this passage with the passage just quoted for the judgment of *Bramwell L.J.* in *Marsden v. Meadows*, 7 Q. B. D. 80, where he says if the document was "intended to be an instrument of transfer or a record of the transaction" it would then be a bill of sale.

Document giving lien upon bills of lading not a bill of sale.

A document giving a lien upon bills of lading is not a bill of sale. *Ex p. Watson re Love*, 5 Ch. D. 35; 46 L. J. Bank. 97; 37 L. T. 75; 25 W. R. 489, *James L.J.* in that case said "A contract of this kind is not a bill of sale or other assurance of personal chattels whereby the grantee or holder has power to seize or take possession within the meaning of the Act. The agreement gives the vendors some right in the nature of a lien, but certainly it is not a bill of sale of personal chattels within the meaning of the Act."

License to take possession of personal chattels.

In *Ex p. Newitt re Garrud*, 16 Ch. D. 522; 44 L. T. 5; 29 W. R. 344, there was a building agreement whereby it was stipulated that the landowner might re-enter upon the land and expel the builder upon default by the builder in the fulfilment of his part of the agreement, and upon such re-entry all the materials then upon the premises should be forfeited and become the property of the owner as and for liquidated damages. This agreement was held to be "a license to take possession of personal chattels" but not "as security for a debt," and it did not require registration as a bill of sale. At first sight this case would seem inconsistent with the decision in *Ex p. Jay re Harrison*, 14 Ch. D. 19; 49 L. J. Bank. 7; 42 L. T. 600; 28 W. R. 449, but there the builder "held the premises subject to the payment of the rent . . .

Building agreements.

and subject to the power of distress and entry in default of any of the stipulations on his part or on his becoming bankrupt or insolvent or assigning over his estate for the benefit of his creditors, in either of which cases all the improvements, materials, implements, plant, chattels and effects . . . which shall not have been actually demised and leased should be and become absolutely forfeited to the said A.E. (the landlady.)" The materials on the land were there held to be the property of the trustee in liquidation upon the principle "that a simple stipulation that upon a man's becoming a bankrupt, that which was his property up to the date of the bankruptcy should go over to some one else and be taken away from his creditors is void as being a violation of the bankrupt law"; see the judgment of *James L.J.* in 14 Ch. D. at p. 25. But where there was an agreement that

Right to seize on grantor becoming bankrupt or insolvent, a fraud on the bankrupt law.

upon the erection of the buildings the landlord would demise the land to the builder, and where there was a clause that all bricks, &c. which might be brought upon the premises by the builder should "be considered as immediately attached to and belonging to the property," it was held to be good and not a bill of sale—*Brown v. Bateman*, L. R. 2 C. P. 272; 36 L. J. C. P. 134; 15 W. R. 359; 15 L. T. N. S. 658.

Act of 1878,  
sec. 4.

Building  
agreements.

The expression "bill of sale" is not confined to a bill of sale which passes the property at law—it includes an equitable assurance without passing the property at law, *Ex p. Mackay re Jeavons*, L. R. 8 Ch. 643; 42 L. J. Bank. 68; 28 L. T. 828; 21 W. R. 664. In this case there was an agreement to execute a bill of sale of certain chattels and effects when such execution was required by the proposed grantee of the bill of sale. When called upon the promisor, who afterwards became bankrupt, refused to execute the bill of sale, and the promisee subsequently attempted to enforce the agreement against the trustee in bankruptcy, but did not succeed. In giving judgment in that case *Mellish L. J.* said: Judgment of *Mellish, L.J.*

Equitable  
assurances  
bills of sale.

*Ex p. Mackay  
re Jeavons.*

"No doubt *quâ* agreement it does not require registration; but in my opinion we ought to hold that an agreement to execute a bill of sale cannot be relied upon as equivalent to an actual bill of sale in equity without involving the consequence that that brings it within the *Bills of Sale Act* and that, if it is not registered, the Court will look upon it as invalid." See also *Ashton v. Blackshaw*, L. R. 9 Eq. 510; 39 L. J. Ch. 205; 21 L. T. 197; 18 W. R. 307; *Ex p. Conning re Steele*, L. R. 16 Eq. 414; 42 L. J. Ch. 74; 21 W. R. 784; *Ex p. Williams re Thompson*, 7 Ch. D. 138; 47 L. J. Bank. 26; 37 L. T. 764; 26 W. R. 274. Where however a bill of sale was executed in pursuance of a previous agreement so to do, and the bill of sale so executed is properly registered, the agreement need not be registered. *Ex p. Homan re Broadbent*, L. R. 12 Eq. 598; 19 W. R. 1078.

Agreement to  
execute bill of  
sale followed  
by such execu-  
tion need not  
be registered.

There the grantor of the bill of sale on October 30th, 1868, wrote the following:—"Gilbert Homan, Esq., Bradford—Dear Sir, I hereby engage to execute, when required by you to do so, a bill of sale upon my furniture in consideration of your advance of £230 towards the payment of my dividend. I am, &c. R. W. Broadbent." In July, 1870, Homan requested Broadbent to execute the bill of sale, and on the 7th of that month the bill of sale was actually executed. On the same day, but after the execution of the bill of sale, Broadbent presented a petition for liquidation, and at a subsequent meeting of creditors, it was resolved that his affairs should be wound up in bankruptcy. The bill of sale was registered within the prescribed time, and the trustee

ACT OF 1878, sought to have it set aside, but the Court refused to do so.  
 SEC. 4. The only document registered here was the bill of sale. The letter containing the agreement was not, and it was expressly decided that there was no necessity for its being registered.

It may be well here to mention a class of documents which are by this Act expressly declared to be bills of sale, i.e., the documents referred to in the 6th section. The following is the text of the section :—

Sec. 6.  
 Certain documents giving power of distress, bills of sale.

*“Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such powers of distress.”*

*“Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.”*

Effect of this section.

The effect of this section is to place these documents upon the same footing with regard to execution creditors as before the commencement of this Act they were with regard to trustees in bankruptcy. Before the commencement of this Act, it was the practice to introduce into a mortgage deed an attornment clause whereby the mortgagor attorned and became tenant from year to year to the mortgagee for and in respect of the mortgaged premises at a certain yearly rent, and a further power was given to the mortgagee to enter upon and take possession of the premises and to determine the tenancy so created. By this means the mortgagee became clothed with the right to distrain. It was held that these mortgages did not come with the definition of a bill of sale under the Act of 1854—*Ex p. Queen's Benefit Building Society v. Threlfall*, 16 Ch. D. 274; 50 L. J. Ch. 318; 44 L. T. 74; 29 W. R. 128. See also *Re Stockton Iron Furnace Company*, 10 Ch. D. 335; 48 L. J. Ch. 417; 40 L. T. 19; 27 W. R. 433. *Ex p. Isherwood re Knight*, 46 L. T. 539. If however the rent fixed by the attornment clause was so excessive that the court would come to the conclusion that it was not intended to create a real rent or a real tenancy, but that the clause was a mere device to enable the mortgagee in the event of the bankruptcy of the mortgagor to obtain an additional security upon chattels which would otherwise have

been distributed amongst his creditors, the clause and the distress levied under it even though before the commencement of the bankruptcy would be invalid as against the trustee in the bankruptcy of the mortgagor as being a fraud upon the bankruptcy law, *Ex p. Jackson re Bowes*, 16 Ch. D. 725; 43 L. T. 272; 29 W. R. 253. See also *Ex p. Williams re Thompson*, 7 Ch. D. 138; 47 L. J. Bank. 26; 37 L. T. 764; 26 W. R. 274. The proceeds of a distress for rent levied under the attornment clause in a mortgage deed are, in the absence of any provision to the contrary in the deed, applicable to the payment of principal as well as interest, *Ex p. Harrison re Betts*, 18 Ch. D. 127; 50 L. J. Ch. 832; 45 L. T. 290; 30 W. R. 38.

Act of 1878,  
sec. 4.

Void as  
against trustees in bankruptcy.

Proceeds of distress under these documents applicable to payment of principal.

The definition of bill of sale under the Act of 1882 is more limited than the foregoing. The second paragraph of section 3 of that Act is as follows:—

“The expression ‘bill of sale,’ and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section 4 of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.”

Definition of  
“bills of sale”  
under Act of  
1882.

The effect of this section therefore is to divide bills of sale into two classes, one of which is to be governed by the Act of 1878, and the other by the Act of 1882. The Act of 1882 (secs. 10 & 15) repeals section 8 and the first part of section 10 of the Act 1878, so that it would now seem that bills of sale which, after the commencement of the Act of 1882, shall be given otherwise than by way of security for the payment of money need not set forth the consideration or be attested by a solicitor as by that Act provided, although there still remains with regard to them the section providing that they shall be registered under the Act.

Effect of  
alteration.  
Setting forth  
the considera-  
tion and  
attestation.

To be an “assignment for the benefit of the creditors of the person giving the same” it must be an assignment for the benefit of all the creditors, *R. v. Creese*, L. R. 2 C. C. R. 105; 43 L. J. M. C. 51; 12 Cox C. C. 539; 29 L. T. 897; 22 W. R. 375; and even though some of the written assents of creditors under it be invalid so as to prevent its operating under the Bankruptcy Act, yet it passes the property of the debtor to the trustee, and is not invalid for want of registration as a bill of sale, *Johnson v. Ossenton*, L. R. 4 Ex. 107; 38 L. J. Ex. 76; 19 L. T. N. S. 793; 17 W. R. 675. A deed which “although it nowhere states that it is intended to include all, its terms are sufficiently general to admit every creditor, and there is no intention to exclude anyone,” comes within

Assignment  
for benefit of  
creditors must  
be for benefit  
of all the  
creditors,

where it is  
intended not  
to exclude any  
creditor.

Act of 1878, the meaning of "an assignment for the benefit of creditors," per *Pollock C.B.* in *General Furnishing, &c. Company v. Venn*, 2 H. & C. 153; 32 L. J. Ex. 220; 9 Jur. N. S. 550; 11 W. R. 756; 8 L. T. N. S. 432. This case was followed in *Boldero v. London and Westminster Loan and Discount Company*, 5 Ex. D. 47; 42 L. T. 56; 28 W. R. 154. Where the debtor, in consideration of the surety's joining him in signing promissory notes for the composition and covenanting with the creditors to pay them the composition, assigns all his property to the surety absolutely, such assignment is not a bill of sale, *Bevor v. Savage*, 16 L. T. N. S. 358. But assignments of this kind must not be in contravention of 13 Eliz. c. 5. In *Spencer v. Slater*, 4 Q. B. D. 13; 48 L. J. Q. B. 204; 39 L. T. 424; 27 W. R. 134, a deed was held to be fraudulent and void within the meaning of that statute which assigned all the debtor's estate and effects to trustees upon trust, that the trustees might carry on the debtor's business if they thought fit, irrespective of the wishes of the creditors, and any creditor before getting a dividend should consent to indemnify the trustees in respect of personal loss and risk. If any creditors refused to assent to the deed they were to get no dividend, it being provided that the dividend apportioned to them should be handed over to the debtor. The principle upon which this case was decided was that there was "at any rate *prima facie*, a resulting trust in favour of the debtor," and "the deed" tended "to defeat or at least delay the creditors," per *Manisty J.* at p. 18 of 4 Q. B. D.

but it may  
come within  
13 Eliz., c. 5.

Marriage  
settlements.

The expression "marriage settlements" does not include post-nuptial settlements, *Fowler v. Forster*, 28 L. J. Q. B. 210; 5 Jur. N. S. 99. A marriage settlement executed before the marriage contained a covenant by the settlor with the trustees that all future real or personal estate which he should at any time during the coverture be possessed of, or entitled to or otherwise acquire, should be conveyed and assigned to the trustees upon the trusts thereby declared. After the marriage the settlor bought some shares in a joint-stock company, the certificates of which were delivered to the trustees, and three years afterwards he was adjudicated a bankrupt. It was there held that the covenant was void as against the creditors, *Ex p. Bolland re Clint*, L. R. 17 Eq. 115; 43 L. J. Bank. 16; 29 L. T. 543; 22 W. R. 152. Even where substantial consideration has passed, a post-nuptial settlement must be properly registered. *Ashton v. Blackshaw*, L. R. 9 Eq. 510; 39 L. J. Ch. 205; 21 L. T. 197; 18 W. R. 307. There the husband, in consideration of an advance of £500 made to him by his wife from her separate property, verbally agreed to

settle some furniture to her separate use, and in pursuance of this agreement assigned it to a trustee by a deed poll, which was registered as a bill of sale; but the registration turned out to be void, and in the husband's bankruptcy the assignee was held to be entitled to the furniture. For an instance of where a post-nuptial settlement was registered as a bill of sale see *Ex p. Cox re Reed*, 1 Ch. D. 303; 33 L. T. 757; 24 W. R. 302. Act of 1878,  
sec. 4.  
—  
Instance of  
registration.

Transfers or assignments of British ships or shares therein are regulated by the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104). There is one case where shipbuilders were indebted to a broker in a sum of £500, and they, wishing to secure him from loss by reason of the cancellation of an agreement which he held as security for the payment of the debt, proposed to him that he should become absolute owner of the hull of a ship they had then in hand building. He assented, and an agreement was signed whereby the builders agreed to sell, and the broker agreed to purchase, the hull of a new ship then in course of building by the builders at their yard, to be completed, according to specification, for £1,150, the £500 already advanced to be considered as part payment. The builders made no further progress with the vessel, and were adjudicated bankrupts eleven days after making the agreement. It was held that the agreement was not a bill of sale, *Swainton v. Clay*, 3 De G. J. & S. 558. It was held in *Ex p. Hodgkin re Softley*, L. R. 20 Eq. 746; 44 L. J. Bank. 107; 32 L. T. 62; 24 W. R. 68, that where a ship was not finished and the builder gave to a bank by way of security a certificate stating that the ship had been built for the bank manager, and the bank manager failed to get himself registered as owner of the ship, as she was not launched, such a security was not a bill of sale. An assignment for valuable consideration of a ship built for a foreigner, although not in the form of a bill of sale under the Merchant Shipping Act, comes within the exception in this Act, *Union Bank of London v. Lenanton*, 5 C. P. D. 243; 47 L. J. C. P. 409; 38 L. T. 689. Transfers of  
ships.

The other expressions in this section stating what are not included in the expression "bill of sale" sufficiently explain themselves. The purpose of this portion of the section is to protect ordinary business transactions from the inconveniences attending the execution, registration, and other formalities connected with a bill of sale.

As to whether a hiring agreement is a bill of sale or not is a question that has been frequently raised. In *Craucour v. Salter*, 18 Ch. D. 30; 45 L. T. 62; 31 W. R. 21, the form of the agreement was not an uncommon one, and Hiring agree-  
ments not bills  
of sale.

Act of 1878, it may be useful to give an outline of it. The defendant  
 sec 4. was the lessee of an hotel, and by the agreement the  
 plaintiff let and the defendant hired the furniture contained  
 Hiring agree- in a schedule to the agreement for the purpose of furnishing  
 ments. the hotel. The amount to be paid by the defendant was  
 £125 on signing the agreement, and £35 on the twenty-  
 second of every succeeding month during the continuance of  
 the agreement, and the defendant was to give promissory notes  
 as collateral security without prejudice to the title of the  
 plaintiff to the furniture, but subject to the stipulation that  
 in case of the furniture being seized and removed by the  
 plaintiff the promissory notes should become void. The  
 defendant was to pay the rent of the hotel, and not to part  
 with any of the furniture or the hotel without the plaintiff's  
 consent. In case of non-payment of any of the said sums on  
 the days appointed, or of breach of condition or seizure or  
 taking in execution of the furniture, the plaintiff might enter,  
 seize and remove the same. On payment by the defendant  
 to the plaintiff of the full sum of £1,321. 15s. by the afore-  
 said instalments the furniture was to become the property of  
 the defendant, but up to such payment should remain the pro-  
 perty of the plaintiff. It was also provided that the said agree-  
 ment should extend to any goods to be supplied in excess of  
 the above amount, and such further goods should be paid for  
 rateably with each instalment. This agreement was held not  
 to be a bill of sale, and *Vice-Chancellor Malins*, in giving  
 judgment, said he was bound by the previous case of *Ex*  
*p. Crawcour re Robertson*, 9 Ch. D. 419; 47 L. J. Bank.  
 94; 39 L. T. 2; 26 W. R. 733, in which an exactly similar  
 agreement was held by the Court of Appeal (*Jessel M.R.*,  
*James and Brett L.JJ.*) not to be a bill of sale. In this  
 latter case *Brett L.J.* said: "The sole question is whether  
 the property in the goods passed to Robertson (the hirer).  
 In my opinion the property did not pass by the agreement.  
 Nor do I think that the property passed by the delivery of  
 the goods, which was made in accordance with the agree-  
 ment. In my opinion the property could not pass until all  
 the instalments had been paid." See also *Ex p. Hattersley*  
*re Blanchard*, 8 Ch. D. 601; 47 L. J. Bank. 113; 38 L. T.  
 619; 26 W. R. 636, where there was a piano lent on what  
 is known as the "three years' system." The documents  
 appearing in this case are a fair example of their class, and as  
 they are not very lengthy, it may be well to set them out.  
 They consisted of a receipt and memorandum, and are as  
 follows:—

"Received from Mr. W. Hattersley a walnut piano on  
 hire at £15 per year, payable by equal monthly instal-

The three  
 years' system.



ments, the first payment to be made on the 21st of August, 1877, and I, the undersigned N. Blanchard, undertake not to remove the said instrument from 61, West Street without the previous consent in writing of the said W. Hattersley, and also to keep the same in proper order and condition; and it is agreed, that in case default is made in payment of the said instalments or any of them, or in the event of the said N. Blanchard dying, or becoming bankrupt or insolvent, or of any valid execution being issued against him or his effects, or of his making an assignment of his effects; then the said W. Hattersley shall be at liberty at once to determine and put an end to the said hiring and to take possession of the said instrument; and in case he does so during the currency of a month, the said N. Blanchard shall pay to him a proportion out of the sum payable for such month.—(Signed) N. BLANCHARD.”

ACT OF 1887,  
sec. 4.

Hiring agree-  
ment—three  
years' system.

“*Memorandum.*—That if the said N. Blanchard shall continue to pay the said sums regularly until the same shall amount to the sum of £45, the said W. Hattersley will thereupon (in consideration of such payment) assign and relinquish all his right in the said instrument in favour of the said N. Blanchard, and the same shall thereupon become his; but until such payment in full, the said N. Blanchard shall have no property whatever in the said instrument, otherwise than as the hirer thereof only.—(Signed) W. HATTERSLEY.”

It was argued at one time that documents of this class were bills of sale, but it is now established that they do not come within the operation of the Act. See also *Ex p. Emerson re Hawkins*, 41 L. J. Bank. 20; 20 W. R. 110. Upon comparing the foregoing with the case of *Ex p. Orme re A. W. Lloyd*, 38 L. T. 328, the principle upon which hiring agreements have been held not to be bills of sale will be more clearly seen. There Messrs. Orme sold to Lloyd, a hotel keeper, a billiard table for £158. 10s.; payment to be £47. 16s. 9d. upon delivery, and the balance in three bills for £37. 0s. 9d. each, payable at three, six and nine months respectively. The billiard table was delivered and the bills accepted by Lloyd, but only £20 of the £47. 16s. 9d. paid. No further sum was paid, but upon being pressed, Lloyd consented to sign an agreement, upon condition that Messrs. Orme should hold it until the original arrangement for the purchase was completed. By the agreement Lloyd agreed to hire, and Messrs. Orme agreed to let the billiard table, and Messrs. Orme had power to seize the table if any of the

These docu-  
ments are not  
bills of sale,

but only  
where the  
property in  
the chattel is  
not parted  
with.

Act of 1878, sec. 4. payments of the hire were in arrear for six days. After Lloyd's signature to this agreement, there was the following:—"This agreement is signed for Messrs. Orme & Sons' satisfaction, and will become null and void on A. Lloyd carrying out the original agreement.—(Signed) A. W. LLOYD." Lloyd became bankrupt and his trustee sold the table, and it was held that Messrs. Orme could not recover the price from the trustee. The Chief Judge decided the case upon the ground that at the delivery of the table to Lloyd it became his property. The first transaction was a sale to him, and any document giving any one else a claim to it as long as it remained in his possession should have been registered as a bill of sale.

Personal chattels. *Cockburn C. J.* in *Brantom v. Griffiths*, 2 C. P. D. at p. 214, interprets "goods, furniture, and other articles capable of complete transfer by delivery" as "capable of present delivery and removal." In that case the subject of transfer was a growing crop which would when separately assigned or charged be a personal chattel within the definition now under discussion. But the decision points out how the first words of the definition ought to be interpreted. This case is also reported, 46 L. J. C. P. 408; 36 L. T. 4; 29 W. R. 313.

Fixtures. "Fixtures" are defined by *Park B.* in *Hallen v. Runder*, 1 C. M. & R., at p. 276, as "personal chattels which have been annexed to the freehold but which are removable at the will of the person who has annexed them." See also *Elwes v. Mawe*, reported in the second volume of "Smith's Leading Cases."

What certain fixtures carry with them. Where the grantor of a bill of sale sold and assigned "all and singular the 104 power-looms, and other effects and things belonging thereto, now being in or upon or about the mill or iron foundry and premises . . . and more particularly set forth in the schedule at the foot or end hereof," and the schedule was as follows: "In the top room of the mill, 52 power-looms, 8-8ths, 36 whereof made by T. Sagar, and 16 made by Dickenson," it was held that the healds, reed, cans, &c., which were on the premises at the time of the execution of the bill of sale passed to the grantee, *Cort v. Sagar*, 3 H. & N. 370; 27 L. J. Ex. 378.

How growing crops are affected by Act of 1882. Under sections 4, 5, and 6 (sub-section 1) of the Act of 1882, the crop unless actually growing cannot be assigned by a bill of sale to which that Act applies.

Fixtures assigned together with freehold or leasehold interest. Trade machinery is defined by section 5, *post* page 18.

For an example of the kind of document showing the exception, "fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed," see *Mather v. Fraser*, 2 K. & J. 536; 25 L. J.

Ch. 361; 2 Jur. N. S. 900, in reference to which see *post* Act of 1878, page 20. sec. 4.

By section 4 of the Act of 1882, every bill of sale to which that Act applies shall have annexed to it or written upon it a schedule containing an inventory of the personal chattels comprised in the bill of sale, and such bill of sale, with certain exceptions, shall have effect only in respect of the chattels specifically described in the schedule, and except as against the grantor, shall be void in respect of the personal chattels not so specifically described. But where (section 6, sub-section 2) "*Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery enumerated in the schedule to such bill of sale,*" nothing contained in section 4 shall render the bill of sale void in respect of those chattels.

How fixtures are affected by the Act of 1882.

The definition of "apparent possession" in this Act is the same as that contained in section 7 of the Act of 1854. Apparent possession.

"The word 'occupy' when applied to a dwelling-house must, I think, mean 'actually dwell,' and cannot refer merely to such an occupation as would create a liability to parochial rates when the house is actually occupied," *per Bramwell B.* in *Gough v. Everard*, 2 H. & C. at p. 12. That case is perhaps the most important upon the point, and it will be useful to state, shortly, the facts of it. Ernest, a land agent and timber merchant, by a document dated April 1st, 1862, agreed to sell to the plaintiff timber, which was lying partly on a public wharf, and partly on a private wharf belonging to Ernest, in consideration of £300 to be paid by an acceptance of the plaintiff. And it was further agreed that the plaintiff was to have the use of certain apartments belonging to Ernest, in a house, the rest of which was let to one Thompson. The acceptance was given, and the plaintiff took purchasers to see the timber, and subsequent to April 1st actually sold some of the timber. The plaintiff also obtained the keys of the private wharf and gave them to his son. On June 19th in the same year, by a document of that date, Ernest agreed to sell to the plaintiff the furniture, &c., of the house which had been occupied by Thompson, who, in the meantime, had given it up, and it was further agreed that the plaintiff was to have possession of the house until certain events therein mentioned happened, which in fact, did not happen before the sheriff, on July 11th, seized, under a writ of *fi. fa.* against Ernest. Ernest had not lived in the house since 1860, and, up to April 1st, 1862, only occasionally used

"Occupied by or used and enjoyed by."

*Gough v. Everard.*

Act of 1878,  
sec. 4.

Apparent pos-  
session.  
*Gough v.*  
*Everard.*

the apartments, the use of which were given to the plaintiff by the agreement of that day, but after that date he never used them. An execution creditor of Ernest claimed both the timber and furniture as against the plaintiff, on the ground that they were in the "apparent possession" of Ernest. The Court held that they were not. The passage quoted from the judgment of *Bramwell B.* referred to the furniture. The same learned Judge, speaking of the timber on the private wharf, said "At the trial I certainly thought that the timber on the private wharf was upon premises still in the occupation of the vendor, and that as such, it was in his 'apparent possession.' I am now satisfied that I was wrong. My error arose from not adverting to the latter words of the interpretation clause, 'notwithstanding that formal possession thereof may have been taken by, or given to any other person.' I construe this clause to mean that the goods shall be deemed in the 'apparent possession' of the vendor, so long as they are on premises occupied by him, if nothing more has been done than the mere taking of formal possession. But that where, as in the present case, far more than mere formal possession has been taken, the clause does not apply." (Reported also 32 L. J. Ex. 210; 11 W. R. 702; 8 L. T. N. S. 363). In *Pickard v. Marriage*, 1 Ex. D. 364; 45 L. J. Ex. 594; 35 L. T. 343; 24 W. R. 886, the grantor of a bill of sale of household furniture managed a business as servant to the grantee at a weekly salary, and was allowed to reside in the house where the business was carried on, and to use the furniture as part of his salary, the grantee residing elsewhere. There it was held that the goods were in the apparent possession of the grantor. In *Robinson v. Briggs*, L. R. 6 Ex. 1; 40 L. J. Ex. 17; 23 L. T. 395, the grantor gave up the keys of the rooms in which goods the subject of the bill of sale were, and there it was held that the goods were not in his apparent possession.

But where the goods comprised the furniture of a ladies' school and the grantee put two men in possession thereof, who did not disturb or remove or in any way interfere with the goods, and allowed the grantors to carry on the school in the usual manner, it was held that the goods were in the "apparent possession" of the grantors, *Ex p. Jay re Blenkhorn*, L. R. 9 Ch. 697; 43 L. J. Bank. 122; 31 L. T. 260; 22 W. R. 907. *James L.J.* there said "the school went on, and the young ladies continued their studies; the furniture was used, the beds were slept in, and it is plain that the whole apparent course and conduct of the household went on exactly in the same way as usual, the men being there for the purpose, no doubt, of preventing any removal of the goods.

Now, that is, to my view, exactly the kind of apparent possession which was aimed at by the last clause of the 7th section of the *Bills of Sale Act*." And *Mellish L.J.* in the same case said "The distinction is that if a broker is simply put in and remains in possession, so as to prevent the removal of the furniture, but allowing everything to go on just as it did before, permitting everything to be used by the debtor and his family, then the goods still remain in the apparent possession of the debtor. There must be something done which takes them plainly out of the apparent possession of the debtor in the eyes of everybody who sees them." *Ex p. Homan re Vining*, L. R. 10 Eq. 63; 39 L. J. Bank. 4; 22 L. T. 179; 18 W. R. 450 affirms the same principle. There a person on behalf of the assignee took possession of household furniture and remained in the house, but the assignor continued to live and use the furniture as before, and it was held to be in his "apparent possession." If the grantee takes possession of the goods and advertizes them for sale as being under a bill of sale, they are not in the apparent possession of the grantor, *Emanuel v. Bridger*, L. R. 9 Q. B. 286; 43 L. J. Q. B. 96; 30 L. T. 194; 22 W. R. 404, but if he take possession of household furniture by a broker's man, who remains in the house and sleeps in an upper room but does not remove any of the furniture, or interfere with the use of it by the grantor, and if the grantee subsequently advertizes the furniture for sale without mentioning his bill of sale, the advertisement only giving a reference to a firm of solicitors for particulars, the goods are still in the apparent possession of the grantor, *Ex p. Lewis re Henderson*, L. R. 6 Ch. 626; 24 L. T. 785; 19 W. R. 835. An attempt by the grantee to take possession does not affect the grantor's apparent possession, *Ex p. Fletcher re Henley*, 5 Ch. D. 809; 46 L. J. Bank. 93; 37 L. T. 758; 25 W. R. 573, not even where the grantee is entitled to take such possession, *Ancona v. Rogers*, 1 Ex. D. 285; 46 L. J. Ex. 121; 35 L. T. 115; 24 W. R. 1000. If the goods comprised in an unregistered bill of sale are at the time of filing a bankruptcy petition against the grantor in the actual visible possession of the sheriff, issued either by the grantee or by a third person, they are not, even though the grantee has taken no possession, in the "apparent possession" of the grantor. "When I say 'actual possession,' I mean actual visible possession, such a possession that every one exercising ordinary vigilance can see it. If the sheriff's officer took possession in the disguise of a livery servant of the grantor, of course that would not do," *per Lush L.J.* in *Ex p. Saffery re Brenner*, 16 Ch. D. 668; 44 L. T. 324; 29 W. R. 749. This case practically overrules

Act of 1878,  
sec. 4.

The chattels must be taken plainly out of possession.

If the chattels are advertised "under a bill of sale," then they are not in the apparent possession. But a disclosure of circumstances must be made.

Attempt to take possession does not affect the apparent possession.

Possession of sheriff take goods out of apparent possession of grantor.

ACT OF 1878,  
secs. 4—5.

*Seal v. Cla-  
ridge.*

the decision in *Ex p. Mutton re Cole*, L. R. 14 Eq. 178; 41 L. J. Bank. 57; 26 L. T. 916; 20 W. R. 882. In *Seal v. Claridge*, 7 Q. B. D. 519; 50 L. J. Q. B. 316; 44 L. T. 501; 29 W. R. 598, the goods in respect of which the bill of sale was given were in the house occupied by the grantor and his family at Birmingham. The grantor with his family went to Brighton, and when the grantee's auctioneer went to the house where the goods were, for the purpose of taking an inventory, he found a clerk packing some of the goods whom he told not to remove them and he left a man in possession. The grantor afterwards returned to the house, and having a key went in and out at his pleasure but never slept there. The Court of Appeal held that the goods were in the apparent possession of the grantor. *Lord Selborne L.C.* there said "The goods comprised in the bill of sale were in the house of the grantor, to or from which he went at his pleasure. It is true that he did not sleep in the house, but no doubt he might have done so if he thought fit. Another point is whether more than formal possession had been taken on behalf of the grantee. It is true that a man had been put in possession of the goods; but nothing more had been done except telling the clerk not to remove the goods."

Application  
of Act to  
trade  
machinery.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(a.) In or incidental to the making any article or part of an article; or

(b.) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(c.) In or incidental to the adapting for sale any article.

There are two cases, namely, *Kent v. Astley*, L. R. 5 Q. B. 19; 39 L. J. M. C. 3; 18 W. R. 185; 21 L. T. N. S. 425; 10 B. & S. 802, and *Redgrave v. Lee*, L. R. 9 Q. B. 363; 43 L. J. M. C. 105; 30 L. T. 519; 22 W. R. 857, in which the Court of Queen's Bench have interpreted the words "premises" and "factory" under 30 & 31 Vict. c. 103 s. 3 sub-s. 7. In *Kent v. Astley* the question raised was whether a slate quarry in a large open space extending over an area of 400 acres, the only buildings being sheds in which the rocks were split into slates and prepared for sale, was or was not a "factory" within the meaning of the above sub-section, and it was held that it was not. *Cockburn C.J.* there says: "I do not think that in using the word 'premises' the legislature intended to include sheds erected in the quarry merely as a protection against the weather; they are only accessories to the quarry and the quarrying processes; and the legislature has not as yet declared that open-air works shall be within the scope of the Factory Acts." In *Redgrave v. Lee* there was an area of ten acres in which the manufacture of cement from chalk and mud was carried on chiefly in the open air, and in which 200 people were employed in grinding and washing in mills, but in which there was no great building where men and women were employed under cover. This was held not to be a "factory" within the meaning of the same sub-section.

ACT OF 1878,  
secs. 5—6.

"Factory or  
workshop."

By the Act of 1882 (sec. 6 sub-sec. 2) trade machinery, where it is put in substitution for any trade machinery specifically described in the schedule required by that Act to be annexed to or written upon a bill of sale, is specially excepted from the operation of sections 4 & 5 of that Act. Those sections enact that, except as against the grantor, a bill of sale shall be void in respect of personal chattels which are not specifically enumerated in a schedule annexed to or written upon the bill of sale, and of which the grantor is not the true owner at the time of the execution of the bill of sale.

Effect of the  
Act of 1882  
upon trade  
machinery  
not included  
in schedule.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Certain  
instruments  
giving  
powers of  
distress to  
be subject  
to this Act.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Act of 1878,  
secs. 6—7.

This section has already been referred to and discussed at page 8 *ante* where it was thought convenient to treat the documents referred to with the other documents which come within the definition of bills of sale under this Act.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

*Mather v. Fraser.*

The law before the passing of the present Act

It may be well to set out shortly how the law stood before the passing of this Act. In *Mather v. Fraser*, 2 K. & J. 536; 25 L. J. Ch. 361; 2 Jur. N. S. 900, it was decided that a mortgage by tenants in fee of the "land . . . and boilers, mill gear, millwright work and machinery then or thereafter to be fixed to the said lands, &c.," passed the fixtures to the mortgagee and was not a bill of sale. This decision was followed in *Longbottom v. Berry*, 39 L. J. Q. B. 37; L. R. 5 Q. B. 123; 22 L. T. 385; 10 B. & S. 852; and in *Holland v. Hodgson*, L. R. 7 C. P. 328; 41 L. J. C. P. 146; 26 L. T. 709; 20 W. R. 990, and in a number of other cases. An equitable mortgage by deposit of the lease was held to pass the fixtures in *Ex p. Astbury re Richards*, L. R. 4 Ch. 630; 38 L. J. Bank. 9; 20 L. T. N. S. 997; 17 W. R. 997; *Meux v. Jacobs*, L. R. 7 H. L. 481; 44 L. J. Ch. 481; 32 L. T. 171; 23 W. R. 526; but in cases where the mortgagee had by deed power to sever the fixtures and sell them separately, such a mortgage was held to be a bill of sale requiring registration, *Ex p. Alexander re Eslick*, 4 Ch. D. 503; 46 L. J. Bank. 30; 35 L. T. 914; 25 W. R. 260; *Ex p. Daglish re Wilde*, L. R. 8 Ch. 1072; 42 L. J. Bank. 102; 29 L. T. 168; 21 W. R. 893. See also *Hawtry v. Butlin*, L. R. 8 Q. B. 290; 42 L. J. Q. B. 163; 28 L. T. 532; 21 W. R. 633. The present section is intended to overrule these last cases, so that now if a deed or instrument conveys or assigns any freehold or leasehold interest in the land or building to which fixtures are affixed, or in the land on which crops are growing, such deed or instrument is not a bill of sale by reason that it assigns fixtures or growing crops, no matter by what words or with what powers, and the mortgagee has such rights

altered by this section.



over the fixtures or crops, as the case may be, as the deed or instrument purports to give. We have the advantage of a learned Judge's interpretation of this section. In *Ex p. Moore and Robinson's Bank re Armytage*, 14 Ch. D. 379; 49 L. J. Bank. 60; 42 L. T. 443; 28 W. R. 924, *Bacon V.C.* says: "No doubt the statute may be read as if it had said, Whereas Lord Hatherley, when Vice-Chancellor Sir W. Page Wood, has decided in *Mather v. Fraser* that if an instrument which conveys an interest in land conveys also machinery fixed to the land, such instrument does not require registration, and whereas the Court of Exchequer Chamber, speaking by the mouth of *Lord Blackburn J.* in *Holland v. Hodgson*, has referred to, and entirely adopted, that decision, in so doing following a decision in the Court of Queen's Bench, in *Longbottom v. Berry*, to the same effect; and whereas other and contrary decisions have been arrived at by the Courts of Chancery; now to remove all doubts and difficulties be it enacted; and so forth. And then the legislature proceeds by enactment to establish and confirm the principle which had been laid down by Vice-Chancellor Wood."

ACT OF 1878,  
secs. 7—8.

Interpretation  
by Bacon,  
V. C., in *Ex p. Moore and Robinson's Bank re Armytage*.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Avoidance of  
unregistered  
bill of sale in  
certain cases.

This section is repealed by section 15 of the Act of 1882, which replaces it with the following:—

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth

Provision in  
Act of 1882 in  
substitution.

ACT OF 1878, *the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.*  
 sec. 8.

Limited appli- It is to be observed, as already stated *ante* p. 9, that the  
 cation of Act Act of 1882 applies only to bills of sale given by way of  
 of 1882. security for the payment of money, and that by reason of  
 the repeal of section 8 of the Act of 1878, the formalities  
 required by that section are no longer necessary in respect of  
 bills of sale to which the 1882 Act does not apply and which  
 shall be executed after November 1st, 1882.

Similarity of As, however, the words as to attestation, registration, and  
 both sections. the setting forth the consideration are practically the same in  
 the repealed and the new sections, the decisions upon the  
 repealed section will apply in the interpretation of the new  
 section.

Attestation. The manner of attestation is different in both Acts, as will  
 be seen hereafter—see *post* p. 33, but the time for registration  
 is the same in both Acts, except with regard to bills of sale  
 executed in any place out of England.

“Clear Days” It would seem that the introduction of the word “clear”  
 how counted. makes really no difference as to the time. There are decided  
 cases upon the meaning of similar words used in other  
 statutes. For example, by 3 Geo. IV. c. 39, sec. 1, “every  
 warrant of attorney . . . . shall within twenty-one days  
 after the execution of such warrant be filed, &c.,” and in  
*Williams v. Burgess*, 12 A. & E. 635; 4 P. & D. 348; 9 D.  
 P. C. 544, it was held that the twenty-one days should be  
 reckoned exclusively of the day of execution; and that a warrant  
 executed on December 9th, and filed on the 30th, was in time.  
 It was held in *Robinson v. Waddington*, 13 Q. B. 753; 13  
 Jur. 537; 18 L. J. Q. B. 250, that in construing 1 stat.  
 W. & M. c 5, sec. 2, which authorises the sale of goods dis-  
 trained “within five days next after such distress and notice  
 thereof,” the days should be calculated inclusively of the  
 last day, and exclusively of the day of taking.

Power of Section 14 of this Act (1878) *post* p. 50, gives power to a  
 Judge to ex- judge under certain circumstances to extend the time for  
 tend time for registration.  
 registration.

“Shall set forth the con- The cases which have been decided upon the interpretation  
 sideration.” of the words “shall set forth the consideration” are ap-  
 parently inconsistent, and in order to understand the  
 principles upon which they went it will be necessary to go  
 into them in some detail.

In *Ex p. Carter re Threapleton*, 12 Ch. D. 908; 41 L. T.  
 37; 27 W. R. 943, Hird, the grantee of the bill of sale,  
 advanced, in March 1878, to the grantor's firm a sum of £73  
 on the promise by the firm to give a security on certain

machinery. On the 6th or 7th of the next month he advanced a further sum of £60 to the grantor, then as representative of the firm, and on the 26th or 27th of April he advanced a further sum of £107 upon an agreement that the firm should give, as security, whatever was contained in a certain room. The grantee during the next month tried in vain to obtain the promised security, and on June 8th the firm dissolved partnership, Threapleton, the grantor, taking over the premises and debts of the firm. On June 14th and on July 16th, the grantee made advances to the grantor of £100 and £60 respectively. The five advances made a total of £400. The bill of sale was executed on January 10th, 1879, under pressure from the grantee. The recitals were as follows:—"Whereas in the month of June last, the said Joseph Paget Threapleton applied to the said John Hird to lend to him the sum of three hundred and forty pounds, which he consented to do, on the said Joseph Paget Threapleton agreeing to execute a bill of sale when called upon so to do, of the machinery and stock-in-trade hereinafter described; and whereas in the month of July last, the said Joseph Paget Threapleton applied for a further loan of sixty pounds, which he, the said John Hird, agreed to make, on the condition that the same should be secured in like manner as the said sum of three hundred and forty pounds so lent as aforesaid; and whereas the said John Hird has since called upon the said Joseph Paget Threapleton to refund the said sums of three hundred and forty pounds, and sixty pounds, making together the sum of four hundred pounds; but the said Joseph Paget Threapleton being unable to pay the same, hath consented to enter into this present security, in accordance with the said agreement." It was held in this case that the consideration was not sufficiently set forth within the meaning of section 8. *Bacon C.J.* in giving judgment, said: "Anything more contrary to the truth than this recital there cannot be. Of the £400 the sum of £240 was not advanced in the month of June, nor was it advanced to the debtor alone."

Act of 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

*Ex p. Carter  
re Threaple-  
ton.*

Recital.

*Bacon, C. J.,  
on this case.*

In *Credit Co. v. Pott*, 6 Q. B. D. 295; 50 L. J. Q. B. 106; 44 L. T. 506; 29 W.R. 326; it was proved that during several years there had been several loans and advances of money by the grantees to the grantor in respect of which bills of sale had from time to time been given but not registered. Shortly before the bill of sale in question was given the parties met and the amount found to be due from the grantor to the grantees was £7,350 exclusive of a sum which was otherwise secured to the grantees and another sum for which they were guarantors for the grantor. The bill of sale was given to secure the

*Credit Co. v.  
Pott.*

Act of 1878, £7,350. It recited that the grantees had agreed to lend to the grantor the sum of £7,350, but no money actually passed.

sec. 8.

Setting forth  
the considera-  
tion.

Credit Co. v.  
Pott.

Previously  
existing debt.

Judgment of  
Lord Sel-  
borne, L. C.,  
and of Brett,  
I. J.

Then it went on as follows:—"Now this indenture witnesseth that in pursuance of the said agreement, and in consideration of £7,350 now paid by the said company, as the mortgagor doth hereby admit, he the mortgagor doth assign," &c. It was held in this case that the consideration was sufficiently stated. Lord Selborne L.C. there said "Now, as between the parties to the deed, it appears to me that, as there was no fraud, the deed is conclusive evidence of the previously existing debt being satisfied as much as if the money had been actually handed over; because, when the company treat the £7,350 as a new advance (and no money was in fact advanced, except by treating the previous debt as paid) the company could not have said to the debtor that he owed the debt which had been previously contracted." Brett L.J. in the same case said, "Both the legal effect and the mercantile and business effect of the transaction was as if there had been an actual advance in money of £7,350 and consequently the consideration is, I think, truly described." At first sight it seems difficult to reconcile this case with *Ex p. Carter re Threappleton* (see ante), but on comparing both cases the difference seems to be that in the latter case the recital was absolutely contrary to the truth, part of the money having been in the first instance advanced not to the grantor alone, but to his firm. However in *Ex p. National Mercantile Bank re Haynes*, 15 Ch. D. 42; 49 L. J. Bank. 62; 43 L. T. 36; 28 W. R. 848, *Baggallay L.J.* questioned the authority of *Ex p. Carter*.

*Ex p. Carter*  
questioned.

The consideration was held to be truly set forth where A sold a brewery and certain chattels to B for £2,500, and B sold his bargain to C, whereupon A and B executed a conveyance of the brewery to C, but C being only able to pay A £500 gave A a mortgage of the brewery and chattels to secure the balance of £2,000 due to A, which was expressed to be given "in consideration of the sum of £2,000 to C paid by A immediately before the execution of these presents." — *Ex p. Bolland re Roper*, Law Times Newspaper, August 5th, 1882, p. 249.

*Ex p. Berwick*  
*re Young*.

In *Ex p. Berwick re Young*, 43 L. T. 577; 29 W. R. 292, the consideration was set forth as follows: "in consideration of the sum of £65 now paid to the said F. A. Young, by the said E. Field." The money was in fact paid as follows: £12 on April 17, 1877, £16 on June 16, 1877, £20 on Nov. 10, 1877, £10 on July 25, 1877, and £7 on Oct. 16, 1878. The date of the bill of sale was January 14, 1879. *Bacon C.J.* held that the consideration was not sufficiently set

forth, and distinguished the case of *Credit Co. v. Pott*, 6 Q. B. D. 295; 50 L. J. Q. B. 106; 44 L. T. 506; 29 W.R. 326, saying that there "there was an agreement that security should be given as the moneys were advanced . . . . . The manner in which the consideration for the bill of sale before the Court was stated was a mere falsehood."

Act of 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

*Credit Co. v.  
Pott* distin-  
guished.

In *Hamlyn v. Betteley*, 5 C. P. D. 327; 49 L. J. C. P. 465; 42 L. T. 373; 28 W. R. 956, the recital was as follows:—"The said mortgagor having two executions upon his premises situate in . . . . . and being unable to carry on his business by reason thereof, had applied to and requested the said mortgagee to advance and lend him the sum of £182. 3s., to enable him to pay out such executions and to carry on his said business, which the said mortgagee had agreed to do on having the assignment or other assurance thereafter contained," and the deed then went on to say that in pursuance of the said agreement, and in consideration of the said sum of £182. 3s. then paid, the property in question was assigned to the mortgagee. The money was paid by the mortgagee partly to a sheriff's officer to pay out an execution, partly to an execution creditor, partly to a solicitor (by whom the bill of sale was attested) for money lent and for costs, and the balance to the mortgagor. It was there held that the consideration was sufficiently stated. *Grove J.* in giving judgment, said "The fact that part of the money went to other persons with the grantor's assent does not render the statement of the consideration inaccurate: it was quite competent to him to direct what should be paid to himself and what should be paid to others on his behalf. If the mis-statement of the transaction is so mixed up with the consideration as to give an untrue impression of what the consideration really was that might be an improper setting forth of the consideration: but that would be a very different case from this."

Part of the  
money paid  
to satisfy exe-  
cutions.

Statement  
must not give  
an untrue  
impression.

In *Ex p. National Mercantile Bank re Haynes*, 16 Ch. D. 42; 49 L. J. Bank. 62; 43 L. T. 36; 28 W. R. 848, the bill of sale contained a recital that the mortgagor had applied to the mortgagees to advance him £2,050, which the mortgagees agreed to do upon having the repayment thereof, together with the further sum of £205, the amount of bonus and expenses attending the advance secured in the manner thereafter expressed, and it was witnessed that "in consideration of £2,050 by the mortgagees paid to the mortgagor at or before the execution thereof," the mortgagor thereby assigned, &c. When the bill of sale was executed the managing director of the mortgagees drew and gave to the mortgagor a cheque for £2,050, which was then and

*Ex p. Na-  
tional Mercan-  
tile Bank.*

Act of 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

*Ex p. Na-  
tional Mercan-  
tile Bank.*

Discussed in  
*Ex p. Firth.*  
Brett, L. J.

Jessel, M. R.

*Exp. Firth—  
facts of.*

there cashed by the mortgagees' clerk, who handed the mortgagor £1,500 in bank notes, and a bag containing £550 in gold. The mortgagor at once handed back the gold to meet two promissory notes and a bill of exchange which he had previously given to the mortgagees, but none of which had fallen due until after the date of the execution of the bill of sale. He also changed a £100 note, part of the £1,500, and paid out of it £33, which partly represented interest on the £550, and partly expenses connected with the bill of sale. Here the consideration was held to be sufficiently stated, but both this case and *Ex p. Challenor re Rogers*, 16 Ch. D. 260; 44 L. T. 122; 29 W. R. 205, were subsequently discussed in *Ex p. Firth re Cowburn*, 19 Ch. D. 419; 46 L. T. 120; 30 W. R. 428, where Brett L.J. said (19 Ch. D. at p. 430) that they "could only be treated in future as binding authorities in cases which come within the principle enunciated by Lord Justice James as the ground of those decisions; that is to say, they are only authorities for saying that, if a part of the money stated in a bill of sale as the consideration paid at the time of its execution is, by the direction of the borrower, given at the time, paid in order to satisfy debts of his then existing, the money so paid may be properly stated in the deed as money paid to him. Beyond that it seems to me that those cases have no binding authority;" and in the same case (*Ex p. Firth*), Jessel M.R. speaking of *Ex p. National Mercantile Bank*, says: "It is plain that Lord Justice James, in dealing with this small sum for costs, thought it was a debt. He treats it on the principle that you can only apply the consideration in the payment of a debt. The fact that the costs of the preparation of the deed did not become a debt due from the grantee until after the transaction was completed was not present to his mind, and all he intended to decide was that a debt strictly so called, a debt existing at the time, might be deducted. I think that this reconciles the case with the subsequent decisions. But if it cannot be reconciled, all I can say is that, though I am bound by the decision in a precisely similar case, I do not feel inclined to extend it any further." The facts of the case, from the judgments in which the foregoing extracts are taken (*Ex p. Firth re Cowburn*, 19 Ch. D. 419) were as follows: Only £38. 10s. was actually paid to the mortgagors, the mortgagees' clerk retaining ten shillings for his attendance at the mortgagor's place of business to look at the property, and £1 for the fee of the solicitor who attested the execution of the bill of sale. The recital in the instrument was that the mortgagee had agreed to lend the mortgagors "the sum of £40, upon having the repayment thereof, together

with the further sum of £20, being the amount of interest and expenses attending the said advance, making altogether the sum of £60, secured in manner hereinafter appearing ;” and it then went on to say, “in consideration of the sum of £40 now lent and paid by the mortgagee to the mortgagors,” it assigned, &c. The Court held this bill of sale to be void upon the ground that the real consideration was only £38. 10s.

ACT OF 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

In *Ex p. Charing Cross Advance and Deposit Bank re Parker*, 16 Ch. D. 35 ; 50 L. J. Ch. 157 ; 44 L. T. 113 ; 29 W. R. 204, only £90 was actually advanced to the mortgagee, whilst £30 was retained for “interest and expenses.” The consideration in the bill of sale was set forth as follows : “in consideration of the sum of £120 by the mortgagees paid to the mortgagor at or before the execution hereof (the receipt of which sum the mortgagor hereby acknowledges).” At the foot of the deed, and immediately below the attestation clause, the following receipt was signed by the mortgagor :— “Received the day and year first within written of and from the within named mortgagees the sum of £90, which sum, together with the agreed sum of £30 for interest and expenses, makes the sum of £120, being the consideration money within expressed to be paid by them to me.” The Court held that this document was void as against the trustee. *James L.J.* there said : “The very object of the Act was to prevent the setting forth as part of the consideration that which was retained by the grantee in the shape of interest and expenses.” *Cotton L.J.* in the same case said : “The case is not like *Ex p. National Mercantile Bank* (15 Ch. D. 42), for there the retainer was for the purpose of satisfying a debt existing independently of the transaction of loan. In the present case, on the contrary, the whole of the liability for ‘interest and expenses’ arose out of that transaction which the bill of sale completed and rendered effectual. In the other case, the debt existed independently, and would have remained if the loan secured by the bill had not been made. I think that this kind of retainer was the very thing aimed at by the Act ; the object was to prevent the giving of a security for a sum said to be advanced, when in fact a large portion of it was retained by the grantee.” And the Court refused to consider the receipt as part of the bill of sale for the purpose of explaining the statement of the consideration.

Court will not  
look at receipt  
to explain the  
consideration.

In *Hamilton v. Chainé*, 7 Q. B. D. 319 ; 50 L. J. Q. B. 456 ; 44 L. T. 764 ; 29 W. R. 676, the mortgagee, at the mortgagor’s request, a few days before the execution of the bill of sale in question, paid off a previous bill of sale for £271, and, at the time of the execution as aforesaid, handed

*Hamilton v.*  
*Chainé.*

Act of 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

*Hamilton v.  
Chaine.*

her a cheque for £429, which she sent by the clerk of the solicitor who attested the bill of sale to be cashed, and when the money was brought back she paid out of it (1) a debt of £350, (2) £21. 5s. 6d. to the solicitor for his charges in respect of the preparation of the bill of sale and incidental thereto, and (3) £7. 10s. to the mortgagee for commission on the loan and expenses in connection therewith, in pursuance of a previous arrangement to that effect. The mortgagor further gave to the mortgagee a promissory note for £10 in respect of commission on the loan and expenses connected therewith. The bill of sale "in consideration of the sum of £700 now in hand paid," assigned, &c., and was held to be void. *Grove J.* there said: "If it had been shown that the grantee had made, for example, a journey to London to get the money, or that something was really due to him for expenses, that would be a debt which might be deducted. But this so-called commission was for doing the very thing which is the consideration itself, viz., making the advance." On appeal, *Bramwell L.J.* said: "The agreement was that £700 should be said to be lent by the claimant to Mrs. Chaine, but in truth she should not have that sum, but only £692. 10s."

Substantial  
accuracy suf-  
ficient.

In *Ex p. Winter re Fothergill*, 44 L. T. 323; 29 W. R. 575, the mortgagee had, before January 15th, sent to the mortgagor a cheque for £1,444. 14s. 3d. and on that day stopped payment of the cheque, but later in the same day he agreed to advance the money on good security being given. On the next day the mortgagor's furniture was agreed upon as the security and the stop upon the cheque was withdrawn and the cheque was cashed on January 17th. A few hours later on that day the bill of sale was executed. The material part was as follows:—"Whereas the said mortgagor is indebted to the said mortgagee in the sum of £1,444. 14s. 3d. for money lent by the said mortgagee to the said mortgagor, and the said mortgagor being unable at present to pay the same, he hath, in order to induce the said mortgagee not to institute proceedings against him, the said mortgagor, agreed to execute these presents. Now this indenture witnesseth, that in pursuance of such agreement, and in consideration of the premises, the said mortgagor for his heirs, executors and administrators, covenants" &c. There was no evidence of any proceedings having been threatened. This bill of sale was held to be good. In delivering judgment *Jessel M.R.* said "That Act (The Bills of Sale Act) was never intended to defraud creditors. Substantial accuracy is sufficient to satisfy all its requirements."

*Carrard v.  
Meek.*

In *Carrard v. Meek*, 43 L. T. 760; 50 L. J. Q. B. 187;



29 W. R. 244, the mortgagee on Nov. 21, 1878, paid to the mortgagor £81. 18s. 0d. as the purchase money of the goods the subject of the bill of sale, but the goods were not delivered to the mortgagee, who received only a receipt with an inventory of the goods. A few days before January 10, 1879, the goods were seized under a writ of *fi. fa.* against the mortgagor, and on January 10 it was agreed between the mortgagor and the mortgagee that if the mortgagee would pay the amount (£16. 3s. 0d.) due under the *fi. fa.* the mortgagor would give a bill of sale of the goods. This agreement was carried out. The bill of sale witnessed that "in consideration of the payment of £81. 18s. 0d. by C. Carrard (the mortgagee) to W. Blin (the mortgagor) and in further consideration of the payment of £16. 3s. 0d. by the said C. Carrard to the sheriff of Surrey, for and at the request of the said W. Blin, the said W. Blin did thereby sell," &c. This bill of sale was held to be good, and *Lindley J.* in giving judgment, said "The words are true enough; but it is argued that it would be inferred by a person reading them that the £81. 18s. 0d. was paid at the same time as the other sum when the bill of sale was given. I think that observation is not well founded, because any person who knows anything about deeds finding no receipt clause in the bill would infer that the £81. 18s. 0d. was not paid at that time."

ACT OF 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

*Carrard v.*  
*Meek.*

In *Ex p. Rolfe re Spindler*, 19 Ch. D. 99; 30 W. R. 52; 45 L. T. 482, the mortgagee paid £21. 10s. to the mortgagor, and by the mortgagor's directions retained £3. 10s. for the expenses of registering, filing and other expenses in connection with the bill of sale, and a further sum of £25 to pay the rent of the premises in which the goods assigned were kept. This latter sum was also retained at the mortgagor's request. The date of the bill of sale was March 23rd, 1881; the £25 covered the rent for the quarters ending March 25th and June 24th, 1881. The £25 for rent was not in fact paid to the landlord until March 30th. The bill of sale assigned the goods "in consideration of the sum of £50 by the assignee, paid to the assignor at or before the execution thereof." The Court of Appeal held it to be void on the ground that the consideration "was partly a payment of money to the borrower, and partly an agreement by the lender to pay £25 for rent to the borrower's landlord. £25 was not due for rent at the time of the execution of the deed; no rent at all became due till the 25th of March, and then only £12. 10s. But assuming that the whole £25 became due for rent on the 25th of March, the money was not paid till the 30th of March. . . . On this ground,

Act of 1878,  
sec. 8.

Setting forth  
the considera-  
tion.

"Paid at  
or before the  
execution  
hereof."

therefore, it appears that the consideration is not stated in the deed as required by the Act. Another ground for so holding is this: In the deed the £50 is stated to have been paid to the borrower 'at or before the execution hereof,' and £25 was not paid at all till seven days afterwards. Though the word 'at' has sometimes been held to have an elastic meaning, it has never, so far as I know, been stretched to such an extent as to include a payment made so long afterwards," *per Jessel M.R.*

*Collis v. Tuson.*

In *Collis v. Tuson*, 46 L. T. 387, the recital was that the mortgagor had applied to the mortgagees to advance to him the sum of £70, less £16, the agreed interest and expenses to be deducted and retained as hereinafter expressed, which the mortgagees had agreed to do upon the terms and conditions hereinafter expressed, and it was witnessed that in consideration of £54 being the said sum of £70, less the said sum of £16 deducted and retained therefrom, and being the agreed interest and expenses in consideration of which that loan was granted, and which said sums of £54 and £16 conjointly were by the mortgagees paid to the mortgagor at or before the execution thereof, the mortgagor did thereby grant, &c. Only £54 was actually paid. The Divisional Court there held that the consideration was sufficiently stated.

The foregoing cases have been set out at some length, and passages from the judgments given, in order to show the variety of circumstances under which the question of the statement of consideration may arise, and the views different learned Judges took of the facts.

It is difficult to deduce any principle from them, but viewing the latest decisions it would seem that the consideration for a bill of sale is not sufficiently stated where money is said to be paid to the mortgagee, unless that money includes only (1) *what he actually receives*; and (2) *what by his direction goes in satisfaction of an actual debt due from him before the execution of the bill of sale*.

General rule.

Difference in  
Act of 1882  
merely verbal.

In the Act of 1882 the words are "truly set forth the consideration." It would seem that the prefix of the word "truly" makes no difference in the interpretation of the new section.

Persons  
against whom  
the bill of sale  
is void under  
Act of 1878.

The Act of 1878 in section 8, classes the persons against whom a bill of sale is void if all the conditions mentioned are not fulfilled. It was held in *Davis v. Goodman*, 5 C. P. D. 128; 49 L. J. C. P. 344; 42 L. T. 288; 28 W. R. 559, that *as between grantor and grantee* a bill of sale was good although it was not attested or registered under the Act. *Thesiger L.J.* there said "By section 8 of the new Act, every bill of

sale shall be attested, it shall be registered and it shall set forth the consideration. Following upon these three directions, certain results are to take effect. The words 'otherwise such bill of sale as against all trustees or assignees of the estate of the person whose chattels are comprised in such bill of sale, or under any assignment for the benefit of the creditors of such person and also as against all sheriffs' officers, &c., shall be deemed fraudulent and void' govern all three limbs of the previous part of the section. . . . The sole result of not performing the directions contained in the first part of the section is to avoid the bill as against certain specified persons, of whom the grantor is not one." It would seem that section 8 of the Act of 1882 is meant to meet this case, for it says that unless the conditions as to attestation, registration, and setting forth the consideration are fulfilled, the "*bill of sale shall be void in respect of the personal chattels contained therein.*"

Act of 1878,  
secs. 8—9.

Persons  
against whom  
bill of sale is  
void.

Alteration by  
Act of 1882.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Avoidance of  
certain  
duplicate  
bills of sale.

Before the commencement of this Act a practice existed of renewing bills of sale within every twenty-one days, the period within which it was necessary to register under the Act of 1854, and in this way publicity was avoided and the purpose of legislation defeated. The words "within or after the expiration of seven days" are interpreted in *Carrard v. Meek*, 43 L. T. 760. *Lindley J.* there said "Nothing can be plainer than the words, and the object of the statute appears to me to be plain enough, remembering what the practice was before the Act. Bills of sale used to be given without being registered, and new bills of sale given in substitution just before the time for registration had run out. The consequence of that was that the goods were always covered by some existing bill of sale, not registered, and never could be seized. Parliament thought that was not right and tried to alter it by this enactment; but it did not go on to say that substitutionary bills of sale executed after the expiration of seven days from the execution of a prior bill of sale shall be void, because, after that time if the prior

Practice of  
renewing bills  
of sale.

Meaning of  
"within or  
after the ex-  
piration of  
seven days."

Act of 1878, bill of sale be not registered the goods can be seized by creditors." And *Lopes J.* in the same case, said "I think

sec. 9—10, sub-s. 1. this section applies to bills of sale given either before or on Duplicate bills of sale. the seventh day, so as to be within or on the expiration of seven days after the expiration of the prior bill." There on November 21st, 1878, a sum of £81. 18s. 0d. passed as the purchase money and a receipt was given with an inventory attached, neither of which was registered. On January 10th following, a further advance was made and a bill of sale given and subsequently registered. This latter bill of sale was held to be good (reported also 50 L. J. Q. B. 187; 29 W. R. 244).

Mode of registering bills of sale.

10. A bill of sale shall be attested and registered under this Act in the following manner:

- (1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:
- (2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed:
- (3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part hereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Attesting solicitor.

The attesting solicitor need not be a practising solicitor, *Hill v. Kirkwood*, 28 W. R. 358; 42 L. T. 105, and if he be solicitor to the grantee it will not invalidate the bill of sale, *Penwarden v. Roberts*, 9 Q. B. D. 137; 46 L. T. L. 161; but if the grantee be a solicitor he cannot also be the attesting witness,

*Seal v. Claridge*, 7 Q. B. D. 516; 50 L. J. Q. B. 316; Act of 1878, 44 L. T. 301; 29 W. R. 598.

The affidavit may be sworn by one partner of a firm of solicitors who were acting for both grantor and grantee before another partner of the same firm, *Vernon v. Cook*, 49 L. J. Q. B. 767. sec. 10, sub-secs. 1, 2. Before whom affidavit may be sworn.

Although it is necessary that a solicitor should attest and that the attestation should state that before execution of the bill of sale by the grantor the effect thereof was explained to him by the attesting solicitor, it is immaterial to the validity of the instrument whether or not such explanation was in fact given. *Ex p. National Mercantile Bank re Haynes*, 15 Ch. D. 42; 49 L. J. Bank. 62; 43 L. T. 36; 28 W. R. 848. And as between grantor and grantee a bill of sale is good even though it be neither attested nor registered under this Act, *Davis v. Goodman*, 5 C. P. D. 128; 49 L. J. C. P. 344; 42 L. T. 288; 28 W. R. 559. Not material to validity of bill of sale that solicitor did not explain. Good as between grantor and grantee.

The attestation of bills of sale under the Act of 1882, is now regulated by the following section:— Alteration by Act of 1882.

“10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section 10 of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

It is necessary to present to the registrar within seven clear days after the making or giving of such bill of sale:

1. The original bill of sale, and every schedule or inventory thereto annexed or therein referred to;
2. A true copy of such bill of sale, and of every such schedule or inventory, and of every attestation of the execution of such bill of sale;
3. Affidavit.

Section 57 of the Stamp Act, 1870 (33 & 34 Vict. c. 97), is as follows:—

“A copy of a bill of sale is not to be filed in any court, unless the original, duly stamped, is produced to the proper officer.” Original bill of sale must be produced.

The copy and affidavit are to be filed, and should be filed simultaneously, *Grindell v. Brendon*, 28 L. J. C. P. 333; 5 Jur. N. S. 1,420; 7 W. R. 579; 33 L. T. 224. Copy and affidavit must be filed simultaneously.

A mere clerical error consisting of the accidental omission of a few words in the copy of a bill of sale registered under this section, if it be clear from the context that no one could be deceived or misled thereby, will not prevent the copy Clerical error not material,

Act of 1878, from being a "true copy" within the meaning of the Act, sec. 10, *Ex p. Kahen re Hever*, 46 L. T. 856.

sub-secs. 1, 2. Great care is necessary in preparing the affidavit. It

What the affidavit must state.

must state:—

1. The time of the bill being made or given.
2. Due execution and attestation.
3. Description of the residence and occupation of the grantor, or in the case of a bill given by any person under or in the execution of any process, a description of the residence and occupation of the person against whom such process issued.
4. Description of the residence and occupation of every attesting witness to the bill.

Time of execution must be the time stated.

The time of the execution of the bill of sale by the grantor, and not the time of attestation or payment of the consideration money, is the time which should be stated in the affidavit. In *Darrell v. Terry*, 6 H. & N. 807; 30 L. J. Ex. 355, the bill of sale was actually executed by the grantor on January 9th, but it was not attested until January 11th, when the consideration money was paid over, although it was expressed in the bill of sale to have been paid on January 9th. The affidavit stated that the bill of sale was executed on January 9th, and this was held to be good. In *Lamb v. Bruce*, 45 L. J. Q. B. 538; 35 L. T. 425; 24 W. R. 645, the affidavit stated in one part that the bill of sale was executed "on the day of which the same bears date," and it stated in another part the day, month and year with a clerical error in substituting 1806 for 1876, by the omission of the word "seventy." It was held that this did not vitiate the registration.

Clerical error.

"Due execution and attestation."

The affidavit must state that the bill of sale was duly "executed and attested." In *Sharpe v. Birch*, 8 Q. B. D. 111; 45 L. T. 760; 30 W. R. 428, the affidavit was made by a solicitor's clerk, and in it after verifying the copy and the time of making the bill of sale, he said that he was present and saw the grantor sign and execute it on the 6th of September, 1881, the effect of the said bill of sale having been first explained to him, and the deponent described the occupation and residence of the grantor, and further said "that the name 'William F. Law' set and subscribed as the witness attesting the due execution thereof, is in the proper handwriting of William Farmery Law, and that he resides at No. 3, St. Mary's Place, Stamford, aforesaid, and is a solicitor." This affidavit was held to be insufficient. "The deponent does not swear that he saw the bill duly attested. It is quite consistent with his oath that he did not see W. F. Law attesting the bill of sale" *per Denman J.* In a

Must state that execution was duly attested.

subsequent case in the Court of Appeal, *Ford v. Kettle*, 46 L. T. N. S. 666; 9 Q. B. D. 139; 30 W. R. 741; this decision was approved. In that case the bill of sale was attested by two witnesses, one of whom was a solicitor, and the other a solicitor's clerk. The affidavit was made by the solicitor's clerk, and stated that the paper annexed to the affidavit was a true copy of the bill of sale, and of every attestation and execution thereof, that the deponent was present and saw the grantor duly execute the bill of sale, and that the same was made originally by him on the 19th Dec., 1881; that the names or signatures subscribed as the attesting witnesses to the bill of sale were respectively in the proper handwriting of Burbidge (the solicitor) and the deponent, Burbidge, being a solicitor of the Supreme Court; and that before the execution of the bill of sale the effect thereof was explained by Burbidge to the grantor. This affidavit was also held to be insufficient. "It is not sufficient" said *Jessel M.R.* in that case, "that the attestation clause should state that the solicitor did attest the execution of the deed; the Act requires an affidavit of the attestation, and here there was no affidavit that the solicitor attested the execution of the deed, or that he was present when it was executed, or of anything equivalent to this." In *Ex p. Knightley re Moulson*, 46 L. T. 776; 30 W. R. 844; the attesting witnesses were a solicitor and a clerk, who afterwards made the affidavit, the material parts of which are as follows:—"1. I was present, and did see David Moulson and William Henry Wilkinson in the said bill of sale mentioned, and whose names are signed thereto, sign and execute the same on the said twenty-sixth day of August, in the year aforesaid. And that previously to such execution the effect of the said bill of sale was fully explained by Samuel Collinge, of 12, East Parade, Leeds, in the county of York, gentleman, a solicitor of the Supreme Court, one of the attesting witnesses to the said bill of sale to the said David Moulson and William Henry Wilkinson; and that the said David Moulson resides at 18, St. Andrew's Place, Bradford, in the county of York, and is a stone merchant and quarry owner, and the said William Henry Wilkinson, resides at 23, St. Andrew's Villa, Lister Hills Road, Bradford, in the county of York, and is a stone merchant's clerk. 2. That the name Alfred Radcliffe, set and subscribed as one of the witnesses attesting the due execution thereof, is of my proper handwriting, and that I am one of the attesting witnesses to the said bill of sale, and reside at 11, Grove Place, Leeds, in the county of York, and am a clerk and surveyor to the York and Lancaster Deposit Bank, 36, Park Square, Leeds, in the county of

Act of 1878,  
sec. 10,  
sub-secs. 1, 2.

The affidavit.

*Ford v. Kettle.*

Judgment of  
*Jessel, M. R.*,  
in that case.

*Ex p.*  
*Knightley re*  
*Moulson.*

Affidavit in  
that case.

ACT OF 1878,  
sec. 10,  
sub-sec. 2

The affidavit.

Test of an  
indictment.

\* *post* p. 62.

Absence of  
description in  
affidavit fatal.

*Pickard v.*  
*Bretts.*

Explained in  
*Banbury v.*  
*White.*

York. 3. And I further say that the name Samuel Collinge set and subscribed as the other witness attesting the due execution thereof, is of the proper handwriting of the said Samuel Collinge, and that he resides at Beech Grove Terrace, Leeds, in the county of York, and is a solicitor of the Supreme Court. This affidavit was held to be insufficient. *Bacon C.J.* there said "Now take the test of an indictment for perjury . . . Suppose that the other witness, the attesting solicitor, was really not present when the bill of sale was executed, but had gone about his business, and then, after the execution of the bill of sale, had incautiously, but not dishonestly, signed the attestation clause. If this were plain, could the deponent be convicted of perjury? he has never said that the other witness was present." The affidavit need not allege that before execution the effect of the bill of sale was explained to the grantor by the attesting solicitor *Ex parte Bolland re Roper*, "Law Times" newspaper, August 5th, 1882, at p. 249. The court in this case was composed of *Jessel M.R. Brett & Cotton L.JJ.*

The same remarks apply to the description of the residence and occupation of the grantor and of the attesting witness. The formalities required by the statute in each case will therefore be treated together. This provision was also contained in the Act of 1854 (sec. 1),\* so that the cases decided upon the interpretation of that Act apply to the present Act.

The absence of the description of the grantor in the affidavit is fatal, although a full description of him may appear in the bill of sale, *Hatton v. English*, 7 El. & B. 94; 26 L. J. Q. B. 161. This case is reported as *Walton v. English* in 3 Jur. N. S. 294. Where the bill of sale described the grantor as "John Bretts of No. 9, George Street, Minories, in the City of London, hotel keeper," and the affidavit described him as "the said John Bretts, of No. 9, George Street, in the bill of sale mentioned," it was held that the requirements of the statute were not satisfied, *Pickard v. Bretts*, 29 L. J. Ex. 18; 5 H. & N. 9; 5 Jur. N. S. 1134; 1 L. T. N. S. 45. This case was explained in the latter case of *Banbury v. White*, 2 H. & C. 300; 32 L. J. Ex. 258; 9 Jur. N. S. 913; 11 W. R. 785; 8 L. T. N. S. 508. There the attestation clause was signed "Christopher Bridgman, Solicitor, Tavistock," and the affidavit was as follows: "I, Christopher Vickry Bridgman, of Tavistock, in the county of Devon, make oath and say, that a bill of sale, a true copy whereof and of the attestation of the execution thereof, and of the schedule thereto annexed is hereunto annexed, marked A, was



duly made and executed by Samuel Banbury, of &c., on &c., in the presence of and duly attested by me, and I further say that the said Samuel Banbury is a yeoman, &c., and that I am the attesting witness to the said bill of sale, and that my residence and occupation hereinbefore set forth is the true description of my residence and occupation." This description of the occupation and residence of the attesting witness was held to be sufficient. *Pollock C.B.* in his judgment said: "In *Pickard v. Bretts*, where this court decided that a bill of sale was invalid because the requisites of the statute had not been complied with in respect of the description of the occupation of the grantor, my late Brother Watson, who was a remarkably accurate judge, expressly said that, provided the affidavit shewed the occupation by reference to the bill of sale, that would be sufficient. An affidavit annexed to a bill of sale becomes part of it; and here the attesting witness says, 'my residence and occupation hereinbefore set forth is a true description of my residence and occupation.' That appearing in the bill of sale, and nowhere else, the deponent in effect says: 'I am the attesting witness to the bill of sale, and my residence and occupation are set forth in the bill of sale.'" In *Jones v. Harris*, L. R. 7 Q. B. 157; 41 L. J. Q. B. 6; 25 L. T. 702; 20 W. R. 143, the bill of sale was expressed to be made between "Isaac Anthony, of Dynevor Lodge, in the parish of Llanarthney, in the county of Carmarthen, auctioneer, of the one part," and the grantee of the other, and the affidavit contained the following: "That the paper writing hereto annexed is a true copy of a bill of sale made or given by Isaac Anthony to David Jones of &c. That I was present and did see the said Isaac Anthony sign and execute the said bill of sale, and that the said Isaac Anthony resides at Dynevor Lodge and is an auctioneer." Isaac Anthony did live at Dynevor Lodge, in Carmarthen-shire, and the parish of Llanarthney, eight or nine miles from Llandilo, and about the same distance from Dynevor Park—a nobleman's seat. A letter directed to "Isaac Anthony, Dynevor Lodge," would reach the person to whom it was addressed. It was there held, that although the description of "Dynevor Lodge," without anything further to fix the locality, was not enough to satisfy the statute, yet resort might be had to the bill of sale itself to fix the particular parish in which the place was situate, and that the requirements of the statute were satisfied.

Act of 1878,  
sec. 10,  
sub-sec. 2.

The affidavit.

If the affidavit shows the occupation by reference to the bill of sale it is sufficient.

*Jones v. Harris.*

The following affidavit (leaving out all that is not material) was held to be sufficient. "That the paper writing hereto annexed is a true copy of a bill of sale bearing date the 15th day of March, 1859, and made between William Taylor

*Wilcoxon v. Seaby.*

ACT OF 1878, of No. 55, Victoria Street, Westminster, in the county of Middlesex, and of Calder Wharf, William Street, Blackfriars, in the City of London, coal merchant, of the one part and George Searby of No. 5, Crescent Place, Blackfriars Road, in the City of London, coal owner of the other part; and of every attestation of the execution thereof and of every schedule thereto; and that such bill of sale was duly executed by the said William Taylor on the 15th of March, 1859, in my presence; and that the signature William Taylor set and subscribed to the said bill of sale is of the proper handwriting of the said William Taylor. 2. I further that, that I am the attesting witness to the said bill of sale." *Wilcoxon v. Searby*, 29 L. J. Ex. 154. The objection taken was that the description of the grantor was not directly sworn to.

*Routh v. Roublot.*

In *Routh v. Roublot*, 1 El. & El. 850; 28 L. J. Q. B. 240; 5 Jur. N.S. 548; 7 W. R. 444, the bill of sale was attested as follows: "Signed, sealed and delivered by the above-named Charles Boutell, in the presence of Isaac Simpson, clerk to Frederick L. Lyne, solicitor, 12, Pancras Lane, City." The affidavit was as follows: "I, Isaac Simpson, clerk to Frederick Lewis Lyne of No. 12, Pancras Lane, in the City of London, gentleman, make oath and say: 1. That the paper writing hereunto annexed, marked A., is a true copy of a bill of sale, and of every schedule or inventory thereto therein referred to, and of every attestation of the execution thereof, as made, and given, and executed by Charles Boutell. 2. That the said bill of sale was made and given by the said Charles Boutell on the day it bears date being the 1st day of July, 1856. 3. That I was present and did see the said Charles Boutell in the said bill of sale mentioned, and whose name is signed thereto, sign, seal and as his act and deed deliver the same on the said 1st day of July, in the year aforesaid. 4. That the said Charles Boutell resides at Binfield House, Binfield Road, Clapham, in the county of Surrey, and is a clerk in Holy Orders. Isaac Simpson, sworn, &c." It was objected to this affidavit that it did not contain a statement describing the attesting witness or that the party making it was also the attesting witness, or that he resided anywhere. The court held that the affidavit was

Not necessary that the language should be absolutely incapable of being perverted.

sufficient. "The intention was" said *Erle J.* "that the affidavit should furnish such proof of the execution and attestation and of the residence and occupation of the attesting witness as should be sufficient for reasonable purposes: not that it should be expressed in language absolutely incapable of being perverted. There is nothing to justify the supposition that the attesting witness and the deponent were

two different persons with the same name." *Blackburn J.* Act of 1878, sec. 10, sub-sec. 2. referring to this case said, "The objection taken to it" (the affidavit), "was that it did not describe the attesting witnesses; and that the court looked at the bill of sale The affidavit. attached, and reading that it was signed, &c., by the above-named Charles Boutell, in the presence of Isaac Simpson, clerk to F. Lyne, solicitor, 12, Pancras Lane, City, the court said that when Simpson, declared in his affidavit that he was present and saw the bill of sale executed, could any reasonable creditor looking at the affidavit have the slightest doubt that he meant to describe himself, and swear that he was attesting witness?" *Jones v. Harris*, L. R. 7 Q. B. at p. 164 also reported 41 L. J. Q. B. 6.; 25 L. T. 702; 20 W. R. 143.

It is difficult to deduce any general rule from the foregoing cases, but looking at the latest decisions as to the validity of bills of sale it would seem that the tendency at present is to construe the Act more strictly now than formerly, so that in preparing affidavits for the purpose of registering bills of sale too much care cannot be taken. In order to be safe now it would seem that the affidavits must, *independently of the bill of sale or of any other document*, disclose the residence and occupation of the grantor and of the attesting witness. Tendency of later decisions of Bills of Sale Acts.

The affidavit should set out the residence of the grantor at the time of making the affidavit, and not at the time of the execution of the bill of sale. This was decided in *Button v. O'Neill*, 4 C. P. D. 354; 48 L. J. C. P. 368; 40 L. T. 799; 27 W. R. 592; overruling *London and Westminster Loan and Discount Company v. Chase*, 31 L. J. C. P. 314; 12 C. B. N. S. 730; 9 Jur. N. S. 412; 6 L. T. N. S. 781; 14 W. R. 698. But in a recent case where *Button v. O'Neill* was distinguished, it was held that the description of the residence of the grantor will not be held incorrect so as to invalidate the registration upon the ground that the grantor was therein described in the same manner as in the bill of sale, notwithstanding that at the time of filing such affidavit, the person making it was aware that the grantor had absconded, *Ex p. Kahen re Hewer* 46 L. T. 856. Residence at time of making affidavit.

In *Blackwell v. England*, 8 El. & B. 541; 27 L. J. Q. B. 124; 3 Jur. N. S. 1302, the attestation clause ran thus: "Signed, sealed and delivered by the above-named Robert Harvey, in the presence of W. R. Cuthbert, clerk to Messrs. Brundrett and Randall, Solicitors, Temple." The affidavit commenced: "I, William Robert Cuthbert, of King's Bench Walk, Inner Temple, in the City of London, clerk to Messieurs Brundrett and Randall of the same place, solicitors, Clerk giving office of his employers.

Act of 1878,  
sec. 10,  
sub-sec. 2.

Residence.

make oath and say." The affidavit went on to say that the bill of sale was executed in presence of the deponent, but although it gave the residence and occupation of the grantor it said nothing further about the residence or occupation of the witness himself. It was held that the residence was sufficiently described, although the deponent did not sleep at the place mentioned. There was a similar decision under similar circumstances in *Attenborough v. Thompson*, 27 L. J. Ex. 23; 2 H. & N. 559; 3 Jur. N. S. 1307, and the same principle was followed in *Hewer v. Cox*, 33 L. J. Q. B. 73; 6 Jur. N. S. 1339; 3 L. T. N. S. 508; 9 W. R. 143, where the grantors were described in the affidavit as residing at New Street, Blackfriars, in the county of Middlesex, printers and copartners. They carried on business at that address but lived elsewhere, and the Court of Queen's Bench held that the requirements of the statute were satisfied.

Where error  
in description  
is not calcu-  
lated to mis-  
lead it is  
sufficient.

Where the name and residence of the attesting witness were stated in the attestation as follows: "Edward Clarke, solicitor, Bloomfield Street, in the City of London," and the affidavit was in the following form: "I, Edward Clarke, solicitor, of 16, Bloomfield Street, in the City of London, make oath and say as follows: I reside at Grove House, Acton, in the City of London," the affidavit was held to be sufficient, although Acton is in the county of Middlesex, and there was no place called Acton in the City of London, but in England there are two villages called Acton, one in Suffolk and the other in Cheshire. *Blount v. Harris*, 4 Q. B. D. 603; 48 L. J. Q. B. 159; 39 L. T. 465; 27 W. R. 202. *Bramwell L.J.* there said: "I decide in favour of the plaintiff upon the ground that the error in the description is not calculated to mislead."

*Briggs v. Boss.*

The description—"I reside at Hanley, in the county of Stafford, and am an accountant" was held to be sufficient in *Briggs v. Boss*, L. R. 3 Q. B. 268; 37 L. J. Q. B. 101; 16 W. R. 480; 17 L. T. N. S. 599. It was there proved that the population of Hanley was 40,000 within the limits of the parliamentary borough, and that letters addressed to the witness with "Hanley" alone as the direction had reached him.

*Ex p.*  
*M'Hattie re*  
*Wood.*

Where the grantor's real name was Joseph Wood, and he was commonly known as Joseph Albert Wood, and he resided at Lache Hall Farm, in the county of the city of Chester; and the affidavit described him as follows: "the said Joseph Wood resides at Lache Hall, in the county of Chester, and is a farmer," it was held to be sufficient, *Ex p. M'Hattie re Wood*, 10 Ch. D. 398; 48 L. J. Bank. 6; 39 L. T.

373; 27 W. R. 327. Where the grantor was the proprietor of a travelling circus then at Southampton, and the affidavit stated that he "at present resides at 3, Weymouth Terrace, and carries on business at Bar Street, in the town of Southampton, and has a permanent residence at 3, Ponton Terrace, Nine Elms, in the county of Surrey," and it was proved that he was the owner of 3, Ponton Terrace, but had not resided there for nine years, and had allowed his brother-in-law to occupy the house, the affidavit was held to be sufficient, *Cooper v. Ibberson*, *Cooper v. Warnlow*, 44 L. T. 300; 29 W. R. 566.

Act of 1878,  
sec. 13,  
sub-sec. 2.

Residence.

Proprietor of  
travelling  
circus.

In *Allen v. Thompson*, 1 H. & N. 15; 2 Jur. N.S. 451; 25 L. J. Ex. 249, the grantor was a clerk in audit office at Somerset House and was described as a "gentleman." This was held to be insufficient. "The Act in question intended that the *occupation* of the individual giving the bill of sale should be stated as one of the means of identifying him, and I am not satisfied that, because in this particular case, the occupation was not wanted for the purpose of identification, it can be dispensed with" *per Pollock C.B.* 1 H. & N. 19.

not sufficient  
where the  
person so des-  
cribed is a  
clerk,

But where the grantor had formerly been a superintendent to a railway company and afterwards a colliery agent, but had no employment at the time of executing the bill of sale, the word "gentleman" was held to be a sufficient description, *is.*

but where he  
has no  
employment  
at the time it

*Morewood v. South Yorkshire Railway*, 3 H. & N. 798; 28 L. J. Ex. 114. Where, however, the grantor had been a managing clerk to a firm of solicitors, and at the time of filing the bill of sale was no longer employed in that capacity but was acting as an accountant in making up the bills and accounts of the firm for which he was receiving pay, the description "gentleman" was not sufficient. *Beales v. Tenant*, 29 L. J. Q. B. 188; 1 L. T. N. S. 295; 6 Jur. N. S. 628.

Where the grantor, a medical student, had acted as assistant to a surgeon but had no employment in that capacity for many months before executing the bill of sale, the description "gentleman" was held to be sufficient, *Sutton v. Bath*, 3 H. & N. 382; 27 L. J. Ex. 388. Where a bill of sale was attested by "William Johnson," following which was an erasure of the words "solicitor, Liverpool," and the affidavit described the attesting witness as "William Johnson of Liverpool, in the county of Lancaster, gentleman," and it was proved that Johnson had formerly been an attorney but for some years past had ceased to practise, and at the time he attested the bill of sale was clerk to an attorney in Liverpool, it was held that the description of the occupation was insufficient. *Tuton v. Sanoner*, 3 H. & N. 280; 27 L. J. Ex. 293; 4 Jur. N. S. 365. But in *Ex p. Young re Symonds*,

Act of 1878,  
sec. 10,  
sub-secs. 2, 3.

Occupation.

"Widow,"  
when  
sufficient.

Where no  
apparent  
occupation  
but really a  
buyer of silk,  
"gentleman"  
not sufficient.

"Esquire"  
not sufficient  
in some cases.

"Government  
clerk."

Onus of proof.

What is  
sufficient in  
the case of a  
company.

42 L. T. 744; 28 W. R. 924, the affidavit ran thus: "The name Edward Dodwell, set and subscribed as a witness attesting the due execution thereof is in my proper handwriting, and I am the only attesting witness to the bill of sale, and reside at 40, Britannia Road, Bedford, aforesaid, and am a . . . ." It was proved that the deponent had no employment during ten years except that he occasionally acted as a man in possession. This affidavit was held to be good. And where the grantor, a widow, had carried on until October 10, 1880, the business of a licensed victualler and removed on that day to a private house, No. 30, Stanley Street, with the intention of resuming the business in a new house, by name the European United States Hotel, and before she resumed such business gave a bill of sale, and the affidavit described her as a widow residing at 30, Stanley Street, and about to move into the European &c. Hotel, it was held to be sufficient. *Ex p. Chapman re Davey*, 45 L. T. 268. Where the grantor had no apparent occupation, but was in fact a buyer of silk and made his living by it, the bill of sale was set aside by reason of his being described in the affidavit only as a "gentleman"—*Adams v. Graham*, 33 L. J. Q. B. 71; 10 Jur. N. S. 356; 9 L. T. N. S. 606. The description "esquire" alone was held to be fatal to the validity of the security where the grantor was the lessee and manager of a theatre and occasionally acted, but at the time of executing the bill of sale had no actual engagement, *Ex p. Homan re Vining*, L. R. 10 Eq. 63; 39 L. J. Bank. 4; 22 L. T. N. S. 179; 18 W. R. 450.

Where the grantor was a clerk in the Admiralty, the description "Government clerk" was held to be sufficient, *Grant v. Shaw*, L. R. 7 Q. B. 700; 41 L. J. Q. B. 305; 27 L. T. 602. In the same case the attesting witness was described as "insurance clerk," which was held to be *primâ facie* sufficient. "It lies on those who say it is not to show that the witness was not what he is described," *per Blackburn J.*

In *Castle v. Downton*, 5 C. P. D. 56; 49 L. J. C. P. 6; 41 L. T. 528; 28 W. R. 257, the grantor was at the time he executed the bill of sale a commercial traveller, selling on commission, and the affidavit stated that he "was until lately a commercial town traveller or agent." This description was held to be insufficient.

In the case of a company giving a bill of sale and having a known place of business, the name of the company, *e.g.* "Glucose Sugar and Colouring Company," "is a sufficient description of the business and occupation of the company, and any person wishing to know more about it may go and

ascertain the same at the place where the company's articles of association are registered," *per Erle C.J.* in *Shears v. Jacobs*, 35 L. J. C. P. 241; 14 L. T. N. S. 286; 14 W. R. 609. See also *Deffell v. White*, L. R. 2 C. P. 144; 36 L. J. C. P. 25; 12 Jur. N. S. 902; 15 W. R. 68; 15 L. T. N. S. 211.

In *Briggs v. Boss*, L. R. 3 Q. B. 268; 37 L. J. Q. B. 101; 16 W. R. 480; 17 L. T. N. S. 599, the attesting witness in his affidavit described himself as an "accountant" residing at Hanley. It was proved that he was clerk to a Mr. Hayes, who was an accountant residing at Manchester, but who had an office with his name upon it at Hanley. The witness was his managing clerk, and occasionally did business as an accountant on his own account. The description was held to be sufficient. But in *Larchin v. North Western Deposit Bank*, L. R. 10 Ex. 64; 44 L. J. Ex. 71; 33 L. T. 124; 23 W. R. 325, where the grantor was a clerk in the accountant's department at the Euston Square station of the London and North Western Railway Company, and was described in the affidavit as an "accountant," it was held that the requirements of the statute were not satisfied. "The object of the Act is to give notice to all who are likely to deal with the grantor of the bill of sale; not to enable a person who is curious on the matter to trace him out, but to enable one who is asked to give him credit to know at once, by looking at the register, whether the person he is asked to give credit to has executed a bill of sale," *per Blackburn J.*, L. R. 10 Ex. pp. 64 & 65.

Act of 1878,  
sec. 10,  
sub-secs. 2, 3.

"Accountant"  
sufficient in  
certain cases,

but not where  
the person is  
clerk in  
railway office.

Section 2 of the Act of 1854 is the section which corresponds to sub-section 3 of section 10 of the present Act. Section 2 of the Act of 1854 is as follows:—

"If such bill of sale shall be made or given, subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed; otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act."

"Defeasance  
or condition  
or declaration  
of trust."

So that the decisions upon the one section are applicable to the other.

In *Ex p. Southam re Southam*, L. R. 17 Eq. 578; 43 L. J. Bank. 39; 30 L. T. 132; 22 W. R. 456, the bill of sale was preceded by a parol agreement, not appearing in the bill of

*Exp. Southam.*

Act of 1878,  
sec. 10,  
sub-sec. 3.

"Defeasance,"  
&c.,

must be some-  
thing which  
prejudicially  
affects the  
donee.

Where  
grantee is a  
trustee not  
within the  
meaning of  
the section.

sale, that the debt should be paid off by small weekly instalments. It was there held by *Bacon V. C.* that the agreement was a defeasance or condition within the meaning of section 2 of the Act of 1854. The year after this case was decided the Court of Appeal had before it the case of *Ex p. Collins re Lees*, L. R. 10 Ch. 367; 44 L. J. Bank. 78; 32 L. T. 106; 23 W. R. 862, where the bill of sale with power to take possession of the chattels was expressed to be made in consideration of £130, to be repaid by certain instalments without interest, the whole to become payable on default in any instalment. Only £100 was actually advanced, the £30 representing bonus and interest. At the same time the following memorandum was signed by the mortgagor:—"February 11, 1874. Mr. Abraham Collins. I have this day granted to you a bill of sale to secure the sum of £130, in which sum is included your charge of £30 for making the advance, which charge is to be paid to you in full, notwithstanding that the money secured by the bill of sale may be repaid, or your rights under the bill of sale enforced before the expiration of the time for payment mentioned in the bill of sale." The bill of sale was registered but the memorandum was not. It was objected that the memorandum was a condition within the meaning of the Act, but this contention was overruled. *James L.J.* there said, "It" (the memorandum) "certainly is not a defeasance, nor is it a declaration of trust. Is it then a condition either in the technical or ordinary sense of the word? Conditions may be either precedent, subsequent or inherent. A condition is precedent where, unless it is complied with, the estate does not arise; it is subsequent where, if it is broken, the estate is defeated; it is inherent where the estate is qualified, restrained or charged with it; in every case it is something which prejudicially affects the interest of the donee. The present memorandum does not restrict, qualify, or charge the interest which is given to the creditor by the bill of sale; if it does anything it gives an additional benefit to the creditor." And so it was decided that the memorandum was not a condition within the meaning of section 2 of the Act of 1854.

In *Robinson v. Collingwood*, 34 L. J. C. P. 18; 17 C. B. N. S. 777, a solicitor was the nominal grantee of the bill of sale, having no personal interest in it, but representing a client, who advanced the money. It was objected that under the provision in section 2 it ought to have appeared on the bill of sale that the grantee was only trustee for his client, as in equity he would have been so held. It was held that the section did not apply, and that the bill of sale was good. *Erle C.J.* there said: "The statute requires that, if a bill of



sale be given subject to any defeasance, condition, or declaration of trust, such defeasance, condition, or declaration of trust shall be registered together with the bill of sale. The object of this provision was to prevent creditors being defrauded by sham bills of sale, by which the whole interest of the grantor is apparently transferred, whereas in reality he retains some interest in the subject of the transfer. But provided the grantor retains no interest, it does not make any difference to a creditor whether the grantee under the bill of sale holds the property for himself or in trust for anyone else."

ACT OF 1878,  
sec. 10,  
sub-sec. 3.  
"Defeasance,"  
&c.

In *Ex p. Odell re Walden*, 10 Ch. D. 76 ; 48 L. J. Bank. 1 ; 39 L. T. 333 ; 27 W. R. 274, Cochrane advanced to Walden, who had then an execution in his house, £150, which was employed partly in paying out the execution. An inventory was made of Walden's furniture, and at the foot of it Walden signed a receipt for £150, as "for the absolute sale" to Cochrane "of the above-mentioned articles." On the same day a written agreement was entered into between Cochrane and Walden for the letting of the same furniture (specified in a schedule) by Cochrane to Walden for two months, for £170, to be paid by Walden to Cochrane at the end of the second month, or such other time as might be agreed on. The agreement gave Cochrane power, in case the £170 should not be duly paid, or if at any time during the continuance of the agreement the goods should be taken under an execution or distress, or Walden should become bankrupt, or take proceedings for liquidation of his affairs or composition, or on the happening of some other specified events, to determine the agreement, and thereupon to take possession of the goods and to sell them. If upon a sale he should realise more than what was due to him under the agreement and his expenses, he was to pay the surplus to Walden ; if he was to realise less, Walden was to make good the deficiency. On payment of the £170 and expenses, the goods were to become the property of Walden. It was held that these two documents constituted a mortgage to secure £170, and that they required registration under the Bills of Sale Act, 1854. "The two documents are the true record of the transaction, and they show by themselves, without any other evidence, that the goods were originally Walden's goods, and that they became, either at law or in equity, by means of these two documents, Cochrane's goods as mortgagee, but liable to be redeemed by Walden. The two documents, therefore, constitute, in fact, a bill of sale with a defeasance upon redemption. That being so, it appears to me that they are within the very words of the *Bills of Sale Act*, and required registration," *per James L.J.*

Defeasance  
upon redemption.

Act of 1878,  
sec. 10,  
sub-sec. 3.

Priority of  
registration.

"Transfer or  
assignment of  
a bill of sale."

A bill of sale attested and registered under this Act takes priority over one that is earlier in date, but unattested and unregistered, *Connelly v. Steer*, 7 Q. B. D. 520; 50 L. J. Q. B. 326; 45 L. T. 402; 29 W. R. 529; *Lyoas v. Tucker*, 7 Q. B. D. 523; 50 L. J. Q. B. 661; 45 L. T. 403, reversing the judgment in the Queen's Bench Division in the latter case.

The question as to what is a transfer or assignment of a bill of sale has arisen in only one reported case since the passing of this Act, namely, *Horne v. Hughes*, 6 Q. B. D. 676; 44 L. T. 678; 29 W. R. 576; affirming 50 L. J. Q. B. 403. There the facts and decision as expressed in the judgment of *Watkin Williams J.* are as follows:—"On the 26th of July, 1877, Edward Rawson Clark by deed assigned by way of mortgage certain goods and chattels to the Real and Personal Advance Company, Limited, for securing a loan of £500 and interest at the rate of 20 per cent. per annum. This instrument was duly registered as a bill of sale according to law. On the 26th February, 1878, the Real and Personal Advance Company, Limited, by the direction of Edward Rawson Clark transferred this mortgage by deed to one Joseph Clarke, who then in consideration of an advance by him to Edward Rawson Clark of the sum of £500, became transferee and mortgagee of the goods and chattels by way of security for the repayment of the said sum of £500, together with interest at the rate of 10 per cent. per annum. On the 20th of February, 1880, the mortgage debt had become reduced, so that there remained due only the sum of £348. 7s. 4d., and Joseph Clarke desiring to be wholly paid off, applied to the claimant Horne to advance the necessary funds and take a transfer of the securities. Horne consented to do so, and at the same time at the request of the mortgagor consented to advance him a further sum, which with the expenses would bring up the amount then advanced by Horne, substantially to the same amount as that originally secured by the bill of sale. Accordingly, on the 20th February, 1880, the deed or bill of sale in question was entered into between the mortgagor, Edward Rawson Clark, the mortgagee, Joseph Clarke, and the claimant, Horne, the transferee of the mortgage, whereby after reciting all the foregoing facts, and that Horne had made the promised advances to about £500; Joseph Clarke and Edward Rawson Clark granted and assigned to Horne, all the goods and chattels by way of mortgage and security to Horne for the total sums of money so advanced by him, together with interest at 10 per cent. per annum. The goods comprised in these deeds were seized under the writ of *fi. fa.*, issued at the suit of the defendant against Edward Rawson Clark,

and the question in this interpleader is, whether the plaintiff's title under the deed is good as against the defendant. The defendant raised several objections to the validity of the plaintiff's title; he contended that the deed of the 20th February, 1880, being a bill of sale within the meaning of the 4th section of the Bills of Sale Act, 1878, was not duly registered according to the provisions of that statute, and was accordingly void as against him. To these objections the plaintiff replied: 1st. That the bill of sale did not require registration, because it was a transfer or assignment of a registered bill of sale, which is expressly excepted from the Act by section 10, which enacts that 'a transfer or assignment of a registered bill of sale need not be registered.' 2nd. He contended that it was in fact duly and sufficiently registered as a bill of sale. If the plaintiff's first contention be correct the further questions do not arise. In our opinion the plaintiff's first contention is correct, and for the following reasons:—The original duly registered bill of sale was given as a security for the repayment of an advance of £500, together with interest at the rate of 20 per cent. per annum, and was intended to remain and be a security so long as the £500 and interest, or any part thereof, was due and unpaid, and if the state of accounts between the mortgagor and mortgagee in relation to the advance so secured had fluctuated from time to time, there can be no doubt that the mortgage would have subsisted as a security for the sum due at any given time on that account until the whole had been finally paid off. This mortgage was duly transferred by the original mortgagees to Joseph Clarke, who advanced the necessary money to pay them off. Joseph Clarke, therefore, as the transferee and mortgagee of the goods held them upon precisely the same terms and with the same rights as the original mortgagees, and although the amount of his advance was at one time reduced to £348, there can be no doubt that if he had allowed it again to be increased, either by arrears or interest, or by another advance to the maximum sum of £500, the security would have been valid and effectual for that sum. In this position of affairs, Joseph Clarke, being desirous of being paid off, applied to Horne to take his place and take a transfer of the security. Horne consented to do so, and at the same time to make up the advance once more to the maximum amount secured by the bill of sale. This appears to us to be in substance, as well as in strict form, a transfer of the bill of sale within the meaning of section 10 of the Act. Had it been attempted under the colour of a transfer and assignment of the existing mortgage to have extended the security and to have made it available

Act of 1878,  
sec. 10,  
sub-sec. 3.

"Transfer or  
assignment of  
a bill of sale."

*Horne v.  
Hughes.*

ACT OF 1878,  
SEC. 10,  
sub-sec. 3,  
SECS. 11, 12.

for a larger advance than that for which the original mortgage had been given, such a transaction would not, in our opinion, have been a transfer of a duly registered bill of sale within the meaning of the 10th section of the Act, but substantially a new bill of sale which would have required registration under the Act."

Renewal of  
registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

This section is  
retrospective.

It is to be observed that this section applies to bills of sale executed before the commencement of the Act as well as bills of sale executed later.

The latter part of the first paragraph is qualified by section 14 *post*, which gives a Judge power to extend the time for registration.

Form of  
register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

Schedule B will be found *post* p. 55.

With this section, section 11 of the Act of 1882 should now be read. It is as follows:—

Act of 1878,  
sec. 12.

*"Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar."*

District registration under  
Act of 1882.

*Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sales registered by the registrar under the principal Act."*

The "London bankruptcy district" is defined by section 60 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), which is as follows:—

London Bankruptcy district.

*"The London Bankruptcy District shall for the purposes of this Act, comprise the following places; that is to say, the City of London and the liberties thereof and all such parts of the metropolis and other places as are situated within the district of any County Court described as a Metropolitan County Court in the list contained in the second schedule hereto."*

The following is the second schedule referred to:—

#### SCHEDULE II.

##### *List of Metropolitan County Courts.*

The Bloomsbury County Court of Middlesex.  
The Bow County Court of Middlesex.  
The Brompton County Court of Middlesex.  
The Clerkenwell County Court of Middlesex.  
The Lambeth County Court of Surrey.  
The Marylebone County Court of Middlesex.  
The Shoreditch County Court of Middlesex.  
The Southwark County Court of Surrey.  
The Westminster County Court of Middlesex.  
The Whitechapel County Court of Middlesex.

Act of 1878,  
secs. 13—15.

The registrar.  
36 & 37 Vict.  
c. 66.  
38 & 39 Vict.  
c. 77.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

Rule 49 of the "Rules of the Supreme Court, April, 1880" (Order LXA. rule 9, of the Rules under the Judicature Acts) is as follows:—

*"The Masters shall be the Registrar for the purposes of the Bills of Sale Act, 1878, and any one of the Masters may perform all or any of the duties of Registrar."*

Rectification  
of register.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

Entry of  
satisfaction.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

How satisfac-  
tion may be  
entered.

An order that satisfaction may be ordered to be written upon a registered copy of a bill of sale may be obtained under Rule 50 of the "Rules of the Supreme Court, April, 1880" (Order LXA., rule 10, of the Rules under the Judicature Acts), which is as follows:—

Order LXA.  
r. 10.

*"A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction signed by the person entitled to the benefit of the bill, of sale, and verified by affidavit, being produced to the Registrar, and filed in the Central Office."*

*"Where this consent cannot be obtained the Registrar may on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the Registrar that the debt (if any) for which the bill of sale was made, has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof."*

A form of summons (H. 56, Rules of the Supreme Court, April, 1880) will be found *post* p. 102.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.

Act of 1878,  
sec. 16.

Copies may  
be taken, &c.

With this section should now be read the following section of the Act of 1882.

16. *So much of the 16th section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register, and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times, to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of the execution, registration, renewal of registration and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.*

Alteration  
under Act of  
1882.

Rule 48 of the Rules of the Supreme Court, April, 1880, and May, 1880 (Order I.XA, rule 8, of the Rules under the Judicature Acts) is as follows:—

*The Clerk of Enrolments and each of the following Registrars, namely—*

*The Registrar of Bills of Sale.*

*The Registrar of Certificates of Acknowledgments of Deeds by Married Women, and*

*The Registrar of Judgments,*

*shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.*

By Order of the Supreme Court, August, 1880, as to fees, the following were ordered to be paid:—

## SEARCHERS AND INSPECTIONS.

		Lower Scale.			Higher Scale.		
		£	s.	d.	£	s.	d.
Act of 1878, secs. 16—20. Fees.	For an Official Certificate of the result of a search in one name in any Register or Index under the custody of the Clerk of Inrolments, the Registrar of Bills of Sale, the Registrar of Certificates of Acknowledgments of Deeds by Married Women, or the Registrar of Judgments	-	-	-	0	5	0
	For every additional name if included in same Certificate	-	-	-	0	2	0
	For a duplicate copy of Certificate, if not more than three folios	-	-	-	0	1	0
	For every additional folio	-	-	-	0	0	6
	For a continuation search if made within 14 days of date of Official Certificate (the result to be indorsed on such Certificate)	-	-	-	0	1	0
		-	-	-	0	1	0

**Affidavits.** 17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

**Fees.** 18. There shall be paid and received in common law stamps the following fees, viz.:

On filing a bill of sale	-	-	-	-	2s.
On filing the affidavit of execution of a bill of sale	-	-	-	-	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	-	-	-	-	5

Additional fees are provided for by the Rules of August, 1880, see *supra*.

Collection of fees under 38 & 39 Vict. c. 77, s. 26. 19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Section 26 of the Judicature Act, 1875, will be found *post* p. 80.

Order and disposition. 32 & 33 Vict. c. 71. 20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

This section is repealed by section 15 of the Act of 1882, so it will be necessary to give some account of the law with regard to "possession, order, and disposition."

By section 15 of the Bankruptcy Act, 1869 (32 & 33 Vic. c. 71), the property of a bankrupt divisible amongst his creditors shall comprise "*all goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, being a trader, by the consent and*



*permission of the true owner, or of which he has taken upon himself the sale or disposition as owner; provided that things in action other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause."* (sub-sec. 5).

Act of 1878.  
sec. 20.

Order and  
disposition."

The law upon this subject cannot be better stated than it is in the judgment of Lord Selborne L.C. in *Ex p. Watkins re Couston*, L. R. 8 Ch. 520; 42 L. J. Bank. 50; 28 L. T. 793; 21 W. R. 530. There he said: "The principle of the law on this subject is well expressed in the preamble to the statute (21 Jac. 1 c. 19 s. 10), to which reference has been made in the argument, and which particularly contemplates the case of persons selling goods and permitted to remain in possession of them, so that they can obtain credit as if the ownership had not been changed. That being the principle, two things are necessary to bring any case within it. First, that there should be what is called the order and disposition of the property; and secondly, that there should be, in point of fact, reputed ownership arising from the circumstances. There is no inflexible rule of law that because a man who was once the owner of goods and has sold them remains in possession of them, he must therefore be held to be the reputed owner. The statute does not say that. If he remains in possession with the reputation of ownership, then the property will pass to his assignees; but it is always a question of fact whether or no the circumstances are such as to create that reputation. What, then, are the principles applicable to that question? Much of the argument seems to me to have proceeded on a fallacious application of the expressions 'knowledge of the world' and 'known to the public.' The doctrine of reputed ownership does not require any investigation into the actual state of knowledge or belief, either of all the creditors, or of particular creditors, and still less of the outside world, who are no creditors at all, as to the position of particular goods. It is enough for the doctrine if those goods are in such a condition as to convey to the minds of those who know their situation, the reputation of ownership, that reputation arising by the legitimate exercise of reason and judgment on the knowledge of those facts which are capable of being generally known to those who choose to make enquiry on the subject. It is not at all necessary to examine into the degree of actual knowledge which is possessed, but the Court must judge from the situation of the goods what inference as to the ownership might be legitimately drawn by those who knew the facts. I do not mean the facts that are only known to the parties dealing with the

Judgment  
of Lord  
Selborne L.C.

Act of 1878,  
secs. 20—24.

goods, but such facts as are capable of being, and naturally would be, the subject of general knowledge to those who take any means to inform themselves on the subject. So, on the other hand, it is not at all necessary, in order to exclude the doctrine of reputed ownership, to show that every creditor, or any particular creditor, or the outside world who are not creditors, knew anything whatever about particular goods one way or the other. It is quite enough in my judgment if the situation of the goods was such as to exclude all legitimate ground from which those who knew anything about the situation could infer the ownership to be in the person having actual possession."

Rules.

36 & 37 Vict.  
c. 66.  
38 & 39 Vict.  
c. 77.

21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Rules have been made for the purposes of this Act and will be found *post* p. 82 *et seq.* They are incorporated with the rules under the Judicature Acts. Some of them have already been referred to and inserted after the sections to which they particularly apply, but they are all given together at p. 82.

Time for  
registration.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Repeal of  
Acts.

17 & 18 Vict.  
c. 38.  
29 & 30 Vict.  
c. 96.

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

The Bills of Sale Acts of 1854 and 1866 are given in full *post* p. 62 *et seq.*

Extent of  
Act.

24. This Act shall not extend to Scotland or to Ireland.

## SCHEDULES.

### SCHEDULE A.

Section 11. I [A.B.] of day do swear  
that a bill of sale, bearing date the day of  
18 [insert the date of the bill], and made between [insert the names  
and descriptions of the parties in the original bill of sale], and which  
said bill of sale [or, and a copy of which said bill of sale, as the case  
may be] was registered on the day of  
18 [insert date of registration], is still a subsisting security.  
Sworn, &c.



## BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.

45 & 46 VICT. C. 43.

*An Act to amend the Bills of Sale Act, 1878.*

ACT OF 1878  
AMENDMENT  
ACT,  
secs. 1—3.  
—

**W**HEREAS it is expedient to amend the Bills of Sale Act, 1878:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commence-  
ment of Act.

2. This Act shall come into operation on the first day of November one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

Construction  
of Act.  
41 & 42 Vict.  
c. 31.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

This section has already been referred to and commented on, see pp. 2, 9.

The result of the alteration in the law is to relieve bills of sale, other than those given by way of security for the payment of money, from the restrictions imposed by section 8 and the first sub-section of section 10 of the Act of 1878, provided they are executed after the commencement of this Act.

Bills of sale, although absolute in form, if really given to secure the payments of money do not escape from the operation of this Act. "The Court will treat a transaction

as a mortgage, although it was made so as to bear the appearance of an absolute sale, if it appears that the parties intended it to be a mortgage," *per Lord Cottenham* in *Williams v. Owen*, 5 My. & Cr. 303; 12 L. J. Ch. 202. See also the notes to *Howard v. Harris*, "White and Tudor's Leading Cases," vol. 2, p. 1042, 4th ed., and *Ex p. Odell re Walden*, 10 Ch. D. 76; 48 L. J. Bank. 1; 39 L. T. 333; 27 W. R. 274 and the passage from the judgment of *James L. J.* in that case, see *ante* p. 45.

Act of 1882,  
secs. 4—5.  
Form  
immaterial.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale  
to have  
schedule of  
property  
attached  
thereto.

Before the commencement of this Act, general words passed property in bills of sale, thus leaving a door open to a fraud. The legislature leaves the grantor to take care of himself, as this section makes void a bill of sale without a schedule as against everybody except the grantor.

State of the  
law before  
this Act.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Bill of sale  
not to affect  
property  
after acquired.

The purpose of this section is to meet the cases where it was held that a bill of sale, including property acquired after its execution, was good in respect of such property. See *Hobroyd v. Marshall*, 10 H. L. Cas. 191; 9 Jur. N. S. 213; 33 L. J. Ch. 191; 7 L. T. N. S. 172; 11 W. R. 171. This principle was also recognized in *Chidell v. Galsworthy*, 6 C. B. N. S. 471, where it was held that under a bill of sale a grantee was justified in seizing after acquired property of the grantor upon premises built subsequently to the date of the bill of sale. But if the mortgagor becomes bankrupt, and after his order of discharge brings other chattels on the premises besides those which he had before the bankruptcy, the goods brought on the premises after the discharge cannot be seized by the creditor under his bill of sale, *Collyer v. Isaacs*, 19 Ch. D. 343. In that case the words of the bill of sale were, "and all other goods, chattels, and effects which may be thereon, or which may at any time hereafter be brought thereon in addition thereto or in substitution thereof or any of them." See also *Carr v. Acraman*, 11 Ex. 566; 25 L. J. Ex. 90; *Cole v. Kernot* and *Thompson v. Cohen* (reported together), L. R. 7 Q. B. 527; 41 L. J. Q. B. 221; 26 L. T. 693.

Afteracquired  
property  
could for-  
merly be  
charged.

Act of 1882, 6. Nothing contained in the foregoing sections of this Act shall  
secs. 6—7. render a bill of sale void in respect of any of the following things,  
(that is to say),

Exception  
as to certain  
things.

- (1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.
- (2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

It will be useful to remember in reading this section, that under section 7 of the Act of 1878, if by the same instrument land passes, this takes it out of the definition of a bill of sale.

This section is referred to *ante* under sections 4 & 5 of the Act of 1878, pp. 14, 19.

Bill of sale with power to seize except in certain events to be void. 7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;
- (2.) If the grantor shall become a bankrupt, or suffer the said goods, or any of them, to be distrained for rent, rates, or taxes ;
- (3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises ;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law.

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Object of the  
section.

The purpose of this section is to invalidate a power which appears in most money lending bills of sale, *i.e.*, an absolute power to the grantee to enter and seize at any time. It was found that this right was sometimes very harshly used, so the present provision is made to meet the hardship on borrowers of the exercise of this arbitrary power.

The question as to what is a covenant or agreement necessary for maintaining the security is one of mixed law and fact ; but it is apprehended that the usual covenants contained in bills of sale would come within this section.

The proviso at the end gives more speedy and cheap relief to the borrower than heretofore. ACT OF 1882,  
secs. 8—11.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein. Bill of sale to be void unless attested and registered.

This section has been fully discussed *ante* p. 21 *et seq.*

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed. Form of bill of sale.

It is not easy to say how strictly the words "in accordance with" will be interpreted here. It is not very difficult, however, to prepare a bill of sale of any kind so as to be within the form given. Some precedents are given in the appendix *post* p. 107 *et seq.*, which it is hoped will be useful for this purpose.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed. Attestation.

As has already been pointed out (*ante* pp. 9 and 22), the effect of the repeals contained in the present Act will be to relieve from the formality of attestation and the formalities contained in section 8 of the Act of 1878 bills of sale to which this Act does not apply.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar. Local registration of contents of bills of sale.  
32 & 33 Vict.  
c. 71. s. 60.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

ACT OF 1882, This section has already been referred to under section 12  
secs. 12—18. of the principal Act *ante* p. 49.

Bill of sale under £30 to be void. 12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Chattels not to be removed or sold. 13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

This gives the grantor time to make an application under section 7 of this Act.

Bill of sale not to protect chattels against poor and parochial rates. 14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor or other parochial rates.

Repeal of part of Bills of Sale Act, 1878. 15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

The effect of these repeals and inconsistencies have been noticed in their proper places.

Inspection of registered bills of sale. 16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addressees, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

This section will be found with section 16 of the principal Act *ante* p. 51.

Debentures to which Act not to apply. 17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of Act. 18. This Act shall not extend to Scotland or Ireland.



SCHEDULE.

FORM OF BILL OF SALE.

' This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_ between **Act of 1882.**  
**A.B.** of \_\_\_\_\_ of the one part, and **C.D.** of \_\_\_\_\_ of the \_\_\_\_\_  
other part, witnesseth that in consideration of the sum of £ \_\_\_\_\_  
now paid to **A.B.** by **C.D.**, the receipt of which the said **A.B.** hereby  
acknowledges [*or whatever else the consideration may be*], he, the said  
**A.B.**, doth hereby assign unto **C.D.**, his executors, administrators, and  
assigns, all and singular the several chattels and things specifically  
described in the schedule hereto annexed by way of security for the pay-  
ment of the sum of £ \_\_\_\_\_, and interest thereon at the rate of  
\_\_\_\_\_ per cent. per annum [*or whatever else may be the rate*]. And  
the said **A.B.** doth further agree and declare that he will duly pay to  
the said **C.D.** the principal sum aforesaid, together with the interest  
then due, by equal \_\_\_\_\_ payments of £ \_\_\_\_\_ on the  
day of \_\_\_\_\_ [*or whatever else may be the stipulated times or time*  
*of payment*]. And the said **A.B.** doth also agree with the said **C.D.**  
that he will [*here insert terms as to insurance, payment of rent, or other-*  
*wise, which the parties may agree to for the maintenance or defeasance of*  
*the security*].

Provided always, that the chattels hereby assigned shall not be liable  
to seizure or to be taken possession of by the said **C.D.** for any cause  
other than those specified in section seven of the Bills of Sale Act  
(1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said **A.B.** in the presence of me **E.F.**  
[*add witness's name, address, and description*].

## APPENDIX A.

## BILLS OF SALE ACTS.

## BILLS OF SALE ACT, 1854.

17° &amp; 18° VICTORIÆ, CAP. 36.

*An Act for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels. [10th July, 1854.]*

APPENDIX A.  
Act of 1854.

**W**HEREAS Frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors: For remedy whereof, be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Bills of sale to be void unless this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or

1. Every bill of sale of personal chattels made, after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or

insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

APPENDIX A.  
Act of 1854.

2. If such bill of sale shall be made or given, subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act.

Defeasance or condition of every bill of sale to be written on the same paper or parchment.

3. The said officer of the said Court of Queen's Bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this Act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition, and description of the person making or giving the same, or in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition, and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number, and the dates of the execution and filing of the same, and the sum for which the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the schedule of this Act, which said book or books and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person the sum of sixpence and no more; and that, in addition to the last-mentioned book, the said officer of the said Court of Queen's Bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition, and description of the person making or giving the same, or of the person against whom such process shall have issued, as the case may be, and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last-mentioned search the sum of one shilling.

Officer of court to keep a book containing particulars of each bill of sale.

4. The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of one shilling.

Office  
entitled to a

**APPENDIX A.**  
**Act of 1864.**

fee of 1s. for  
filing bill of  
sale, and to  
account for  
the same.

Office copies  
or extracts to  
be given on  
paying as for  
copies of  
judgments.  
Satisfaction  
may be  
entered.

Interpretation  
of terms.

sum of one shilling and no more ; and such officer shall render a like account to the commissioners of Her Majesty's treasury, and the said commissioners shall have the like powers in every particular with respect to such account, and the amount of remuneration of such officer, and with respect to any surplus of the fees received by him, as is provided by the seventy-fifth chapter of the statute passed in the thirteenth and fourteenth years of the reign of Her present Majesty with respect to the officers of the Court of Common Pleas therein mentioned.

5. Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said Court of Queen's Bench.

6. It shall be lawful for any Judge of the said Court of Queen's Bench to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged.

7. In construing this Act the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions ; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, but shall not include the following documents ; that is to say, assignments for the benefit of the creditors of the person making or giving the same ; marriage settlements ; transfers or assignments of any ship or vessel or any share thereof ; transfers of goods in the ordinary course of business of any trade or calling ; bills of sale of goods in foreign parts or at sea ; bills of lading ; *India* warrants ; warehouse-keepers' certificates ; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

The expression "personal chattels" shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale :

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

8. This Act shall not extend to *Scotland or Ireland*.

[illegible]

366.

**August, 1866.]**

eighteenth year  
 forty-six, intituled  
*bills of sale of* 17 & 18 Vict.  
 Act, hereinafter c. 36.

ent Majesty, by  
and Temporal,  
ed, and by the

consistent with Construction  
of Act.

"Sale Act, 1854," Short titles.  
1866."

with the affidavit Definition of  
as the registra- registration  
of a bill of  
Principal Act shall sale.

manner herein-  
commencing from  
registration shall

period of five years  
required, subject  
from the original  
Act has expired  
hundred and sixty-  
and purposes as

**APPENDIX A.** it would have been if this Act had not been passed, if such registration  
**Act of 1866.** be renewed in manner aforesaid before the first day of January one  
 thousand eight hundred and sixty-seven.

**Mode of  
 renewing  
 bill of sale.  
 7 W. 4. &  
 1 Vict. c. 30.  
 ss. 1 & 3.**

5. The registration of a bill of sale shall be renewed by some person  
 filing in the office of the masters of the Court of Queen's Bench (being  
 the officers acting as clerk of the docketts and judgments in the said  
 Court) an affidavit stating the date of such bill of sale, and the names,  
 residences, and occupations of the respective parties thereto as stated  
 therein, and also the date of the registration of such bill of sale, and  
 that such bill of sale is still a subsisting security, and such masters  
 shall thereupon number such affidavit and renumber the original bill of  
 sale or copy filed in the said office with a similar number.

**Affidavit to  
 bear a 5s.  
 stamp.**

6. Every affidavit renewing the registration of a bill of sale shall  
 bear an adhesive common law stamp of the value of five shillings, and  
 may be in the form given in schedule A to this Act, and no further fee  
 shall be payable on filing such affidavit.

**Masters of  
 Queen's  
 Bench to keep  
 a book con-  
 taining  
 particulars of  
 each bill of  
 sale and  
 affidavit.**

7. After the passing of this Act, instead of the books directed to be  
 kept by the third section of the principal Act, there shall be kept at the  
 said office one book only, in which shall be fairly inserted, as and when  
 such bills of sale or copies as required by the principal Act, or affidavit  
 of renewal as required by this Act, are respectively filed, the name,  
 residence, and occupation of the person by whom the bill of sale was  
 made or given, or in case the same was made or given by any person  
 under or in the execution of process, then the name, residence, and  
 occupation of the person against whom such process was issued, and  
 also the name of the person or persons to whom or in whose favour  
 the said bill of sale was given, together with the number affixed to the  
 said bill of sale or copy as directed by the principal Act or by this Act  
 (as the case may be); and the date of the said bill of sale or copy, and  
 of the registration thereof, and the date of the filing of the said affi-  
 davit of renewal, and all such particulars shall be entered according to  
 the form given in schedule B. to this Act; and the said book, and every  
 bill of sale or copy and affidavit filed as aforesaid, may be searched and  
 viewed by all persons at all reasonable times upon payment for every  
 search against one person of the fee or sum of one shilling and no more,  
 which fee shall be paid by a common law stamp.

**Book, &c.  
 may be  
 searched on  
 payment of  
 one shilling.  
 Office copies  
 of affidavits  
 to be supplied  
 on payment  
 for same.**

8. Any person shall be entitled to have an office copy of such affidavit  
 of renewal as is required to be filed under this Act upon paying for the  
 same at the like rate as for office copies of bills of sale filed under the  
 principal Act.

**Affidavits may  
 be sworn  
 before one of  
 the masters of  
 the Queen's  
 Bench.**

9. Any affidavit required by the principal Act or this Act may be  
 sworn before one of the masters of the Court of Queen's Bench.

**Application of  
 enactments  
 under this  
 Act.**

10. All enactments for the time being in force relating to common  
 law stamps shall apply to the stamps to be provided for the purposes  
 of this Act.

**Extent of  
 Act.**

11. This Act shall not extend to *Scotland or Ireland*.

#### SCHEDULE A.

I, *A.B.* of \_\_\_\_\_ do swear that a bill of sale, bearing date  
 the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ [insert the  
*date of the bill of sale*], and made between [insert the names, &c., of the  
*parties to the bill of sale as in the original bill of sale*], and which said  
 bill of sale [or "and a copy of which said bill of sale" (*as the case may  
 be*)] was filed in the Court of Queen's Bench on the \_\_\_\_\_ day  
 of \_\_\_\_\_ 18 \_\_\_\_\_ [insert the date of filing], and is still a  
 subsisting security.

Sworn, &c.

## SCHEDULE B.

APPENDIX A.  
Acts of 1866  
—1878.

Satisfaction entered.	No.	By whom given, or against whom Process issued.			To whom given.	Instrument.	Date of Instrument.	Date of Registration.	Date of filing Affidavit of Renewal.
		Name.	Residence.	Occupation.					

## BILLS OF SALE ACT, 1878.

41 &amp; 42 VICT. c. 31.

*An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.*

[22nd July, 1878.]

**W**HEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Bills of Sale Act, Short title. 1878.

2. This Act shall come into operation on the first day of January one Commence- thousand eight hundred and seventy-nine, which day is in this Act re- ment. ferred to as the commencement of this Act.

3. This Act shall apply to every bill of sale executed on or after the Application first day of January one thousand eight hundred and seventy-nine of Act. (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

4. In this Act the following words and expressions shall have the Interpreta- meanings in this section assigned to them respectively, unless there be tion of terms. something in the subject or context repugnant to such construction ; (that is to say) :

The expression "bill of sale" shall include bills of sale, assignments,

**APPENDIX A.**  
**Act of 1878.**

transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents, that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale :

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :

"Prescribed" means prescribed by rules made under the provisions of this Act.

Application  
of Act to  
trade  
machinery.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop ;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers ; and

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose ; and,



3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop. APPENDIX A.  
Act of 1878.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(a.) In or incidental to the making any article or part of an article; or

(b.) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(c.) In or incidental to the adapting for sale any article.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress. Certain instruments giving powers of distress to be subject to this Act.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed, or assigned to the same persons or person. Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the Avoidance of unregistered bill of sale in certain cases.

**APPENDIX A.** petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Avoidance  
of certain  
duplicate  
bills of sale.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Mode of  
registering  
bills of sale.

10. A bill of sale shall be attested and registered under this Act in the following manner :

- (1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor :
- (2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed.
- (3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part hereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Renewal of  
registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the

registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security. APPENDIX A.  
Act of 1878.

Every such affidavit may be in the form set forth in the schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration. Form of  
register.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar. The registrar.  
36 & 37 Vict.  
c. 66.  
38 & 39 Vict.  
c. 77.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act or the omission or misstatement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or misstatement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct. Rectification  
of register.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged. Entry of  
satisfaction.

16. Any person shall be entitled to have an office copy or extract of Copies may be  
taken, &c.

**APPENDIX A.** any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted a *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.

**Affidavits.** 17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

**Fees.** 18. There shall be paid and received in common law stamps the following fees, viz :

On filing a bill of sale	-	-	-	-	2s.
On filing the affidavit of execution of a bill of sale	-	-	-	-	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	-	-	-	-	5s.

**Collection of fees under 38 & 39 Vict. c. 77, s. 26.** 19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

**Order and disposition. 32 & 33 Vict. c. 71.** 20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

**Rules. 36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77.** 21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

**Time for registration.** 22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

**Repeal of Acts. 17 & 18 Vict. c. 36. 29 & 30 Vict. c. 96.** 23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

**Extent of Act.** 24. This Act shall not extend to Scotland or to Ireland.

## SCHEDULES.

APPENDIX A.  
Acts of 1878  
—1882.

## SCHEDULE A.

I [A.B.] of do swear that  
a bill of sale, bearing date the day of 18  
[insert the date of the bill], and made between [insert the names and  
descriptions of the parties in the original bill of sale], and which said bill of  
sale [or, and a copy of which said bill of sale, as the case may be] was  
registered on the day of 18 [insert date of  
registration], is still a subsisting security.  
Sworn, &c.

## SCHEDULE B.

Sat's'ac- tion entered.	No.	By whom given (or against whom pro- cess issued).			To whom given.	Nature of Instru- ment.	Date.	Date of registra- tion.	Date of registra- tion of affidavit of renewal.
		Name.	Resi- dence.	Occupa- tion.					

## BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.

45 & 46 VICTORIA, CHAPTER 43.

An Act to amend the Bills of Sale Act, (1878). [18th August, 1882.]

WHEREAS it is expedient to amend the Bills of Sale Act, 1878 : 41 & 42 Vict.  
c. 31.

Be it enacted by the Queen's most Excellent Majesty, by and with  
the advice and consent of the Lords spiritual and temporal, and com-  
mons, in this present Parliament assembled, and by the authority of the  
same, as follows :

1. This Act may be cited for all purposes as the Bills of Sale Act Short title.  
(1878) Amendment Act, 1882 ; and this Act and the Bills of Sale Act,  
1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

**APPENDIX A.**  
**Act of 1882.**

Commence-  
ment of Act.  
Construction  
of Act.  
41 & 42 Vict.  
c. 31.

2. This Act shall come into operation on the first day of November one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

Bill of sale to  
have schedule  
of property  
attached  
thereto.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have the effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale  
not to affect  
after acquired  
property.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as  
to certain  
things.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say),

- (1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.
- (2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale  
with power to  
seize except  
in certain  
events to be  
void.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;
- (2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;
- (3.) If the grantor shall fraudently either remove or suffer the said goods, or any of them, to be removed from the premises;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law;

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-

mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just. APPENDIX A.  
Act of 1882.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein. Bill of sale  
to be void  
unless  
attached and  
registered.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed. Form of bill  
of sale.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed. Attestation.  
Local regis-  
tration of  
contents of  
bills of sale.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar. principal 32 & 33 Vict.  
c. 71 s. 60.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void. Bill of sale  
under £30 to  
be void.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken or sold, possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of. Chattels not  
to be removed  
or sold.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates. Bill of sale  
but not to protect  
chattels  
against poor  
and parochial  
rates.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect Repeal of part

**APPENDIX A.** the validity of anything done or suffered under the principal Act before the commencement of this Act.

of Bills of  
Sale Act,  
1878.

Inspection of  
registered  
bills of sale.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale, without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Debentures  
to which Act  
not to apply.  
Extent of Act.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

18. This Act shall not extend to Scotland or Ireland.

## SCHEDULE.

### FORM OF BILL OF SALE.

This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_, between *A.B.* of \_\_\_\_\_ of the one part, and *C.D.* of \_\_\_\_\_ of the other part, witnesseth that in consideration of the sum of £ \_\_\_\_\_ now paid to *A.B.* by *C.D.* the receipt of which the said *A.B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A.B.* doth hereby assign unto *C.D.* his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ \_\_\_\_\_, and interest thereon at the rate of \_\_\_\_\_ per cent. per annum [*or whatever else may be the rate*]. And the said *A.B.* doth further agree and declare that he will duly pay to the said *C.D.* the principal sum aforesaid together with the interest then due, by equal payments of £ \_\_\_\_\_ on the day of \_\_\_\_\_ [*or whatever else may be the stipulated times or time of payment*]. And the said *A.B.* doth also agree with the said *C.D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security.*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C.D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A.B.* in the presence of me *E.F.* [*add witness's name, address, and description*].



APPENDIX B.

ADDITIONAL STATUTES.

I. INTERPLEADER.

1 & 2 WILL. IV., c. 58.

*An Act to enable Courts of Law to give Relief against Adverse Claims made upon Persons having no Interest in the Subject of such Claims.*

[20th October, 1831.]

WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That upon application made by or on the behalf of any defendant sued in any of His Majesty's Courts of Law at *Westminster*, or in the Court of Common Pleas of the County Palatine of *Lancaster*, or the Court of Pleas of the County Palatine of *Durham*, in any action of assumpsit, debt, detinue, or trover, such application being made after declaration and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject matter of the action in such manner as the court (or any judge thereof) may order or direct, it shall be lawful for the court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

APPENDIX B.

Upon application by a defendant in an action of assumpsit, &c. stating that the right in the subject matter is in a third party, the court may order such third party to appear and maintain or relinquish his claim, and in the meantime stay proceedings in such action.

2. And be it further enacted, That the judgment in any such action and decision on issue as may be directed by the court or judge, and the decision of to be final.

**APPENDIX B.**  
**I. Interpleader.**

If such third party shall not appear, &c., the court may bar his claim against the original defendant.

Proviso as to orders made by a single judge.

If a judge thinks the matter more fit for the decision of the Court, he may refer it.

For relief of sheriffs and other officers in execution of process against goods and chattels.

Rules, orders, &c., made in pursuance of this Act may be entered of record, and made evidence.

Costs.

the court or judge, in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

3. And be it further enacted, That if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators ; saving nevertheless the right or claim of such third party against the plaintiff ; and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

4. Provided always, and be it further enacted, That no order shall be made in pursuance of this act by a single judge of the Court of Pleas of the said County Palatine of *Durham* who shall not also be a judge of one of the said Courts at *Westminster*, and that every order to be made in pursuance of this Act by a single judge not sitting in open court shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge.

5. Provided also, and be it further enacted, That if upon application to a judge in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court ; and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a judge.

6. And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions ; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers ; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officers made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of court, as well the party issuing such process as the party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case ; and the costs of all such proceedings shall be in the discretion of the court.

7. And be it further enacted, that all rules, orders, matters, and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order ; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments ; and in case any costs shall not be paid within fifteen days after notice of

the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *feri facias* or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution if by *feri facias*; and such writ and writs may bear *teste* on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the court.

APPENDIX B.  
I. Interpleader.  
—

Writs.  
Sheriff's fees.

8. And whereas by a certain Act made and passed in the last session of Parliament, intituled *An Act to Improve the Proceedings in Prohibition and on Writs of Mandamus*, it was among other things enacted, that it should be lawful for the court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as were or might be given or mentioned by or in any Act passed or to be passed during that present session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims: and whereas no such Act was passed during the then present session of Parliament; be it therefore enacted, that upon any such application as is in the said Act and hereinbefore mentioned, it shall be lawful for the court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present Act.

Upon any application under 1 W. IV. c. 21 and this Act, the Court to exercise such powers and make such rules as are given by or mentioned in this Act.

23& 24 VICTORIÆ, C. 126.

*Interpleader Proceedings.*

12. Where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process issued from any one of the superior courts, or from the Court of Common Pleas at *Lancaster* or the Court of Pleas at *Durham*, and the defendant in such action, or the sheriff or other officer, has applied for relief under the provisions of an Act made and passed in the Session of Parliament held in the first and second year of the reign of his late Majesty King *William the Fourth*, intituled *An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims*, it shall be lawful for the court or a judge to whom such application is made to exercise all the powers and authorities given to them by this Act and the hereinbefore mentioned Act passed in the Session of Parliament held in the first and second years of the reign of his late Majesty King *William the Fourth*, though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another.

Interpleader may be granted, though titles have not a common origin.  
1 & 2 W. IV. c. 58.

13. When goods or chattels have been seized in execution by a sheriff or other officer under process of the abovementioned courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels, by way of security for a debt, the court or a judge may order a sale of the whole or part thereof, upon such terms in execution.

Court or judge may direct sale of goods seized in execution.

**APPENDIX B.** as to payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such court or judge may seem just.

**I. Interpleader.**  
 Power to court or judge to decide summarily in certain cases. **14.** Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the court or judge, wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

**Special case may be stated where facts undisputed.** **15.** In all cases of interpleader proceedings, where the question is one of law, and the facts are not in dispute, the judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the court.

**Proceedings on special case in court below and in error.** **16.** The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under "The Common Law Procedure Act, 1852;" and error may be brought upon a judgment upon such case; and the provisions of "The Common Law Procedure Act, 1854," as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act.

**Judgment and decision when to be final.** **17.** The judgment in any such action or issue as may be directed by the court or judge in any interpleader proceedings, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from or under them.

**Rules, orders, &c. made in interpleader proceedings may be entered of record and made evidence.** **18.** All rules, orders, matters, and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the clause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the superior courts of common law.

## II. FEES.

### JUDICATURE ACT, 1875.

38 & 39 VICT., c. 77.

*(Referred to in section 19, Bills of Sale Act, 1878.)*

**Fixing and collection of fees in the High Court and Court of Appeal.**

**26.** The Lord Chancellor with the advice and consent of the Judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may either before or after the commencement of this Act, by order, fix the fees and percentages (including the percentage on the estates of lunatics) to be taken in the High Court of Justice, or in the Court of Appeal, or in any court created by any commission, or in any office which is connected with those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, including the masters and other officers in lunacy, and may from time

to time by order increase, reduce or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken in the said courts or offices, or any of them, or by any such officer as aforesaid. APPENDIX B.  
II. Fees.  
Lunacy fees.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers in the same manner as if it had been enacted by Parliament.

All such fees and percentages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto, the following rules shall be observed :

- (1.) The fees and percentages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
- (3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of fees, and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps, and for keeping accounts of such stamps.
- (4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is, through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.
- (5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act, as the Treasury may from time to time direct, and subject to the deduction of any expenses incurred by those commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.
- (6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees or percentages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

## APPENDIX C.

## RULES OF THE SUPREME COURT, APRIL, 1880.

## R U L E S.

APPENDIX C. 1. These rules may be cited as the rules of the Supreme Court, April, 1880, or each separate Rule may be cited as if it had been one of the rules of the Supreme Court, and had been numbered by the number of the order and rule mentioned in the margin.

Mode of citing. 2. These rules shall come into operation on the sixth day of April, 1880.

Commence-  
ment.

## ORDER XXXVII.

*Evidence generally.*

Form of  
affidavits,  
Order  
XXXVII.  
Rule 3a.

12. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Description and  
address of  
deponent to be  
stated.

13. Every affidavit shall state the description and true place of abode of the deponent.

Order  
XXXVII.  
Rule 3b.

14. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavits  
made by two or  
more deponents.

Order  
XXXVII.  
Rule 3c.

15. Every affidavit shall be filed in the Central Office. There shall be appended to every affidavit a note showing on whose behalf it is filed.

Affidavits to be  
filed.

Order  
XXXVII.  
Rule 3d.

16. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall without leave of the court or a judge be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

Alterations in  
affidavit.

Order  
XXXVII.  
Rule 3e.

Affidavits by  
illiterate per-  
sons.

Order  
XXXVII.  
Rule 3f.

17. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such

affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent. **APPENDIX C.**

18. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall send it to the Central Office. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the Central Office, and the copy duly authenticated with the seal of that office.

Stamping of affidavits, and use of office copies.

Order XXXVII.  
Rule 8g.

ORDER LIV.

*Applications at Chambers.*

33. The following rules numbered 34 to 40, both inclusive, shall apply to all applications at chambers in the Queen's Bench, Common Pleas, and Exchequer Divisions. **Procedure in Chambers.**

34. A summons shall be in the form H 1. in the schedule hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served. **Forms of summons.**

35. A summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof at the Central Office. **Preparation and issue of summons.**

Order LIV.  
Rule 9.

36. Unless a judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the masters in priority to other business. Unless as aforesaid, other summonses shall be returnable at successive hours, commencing at 11 in the forenoon, and summonses to be attended by counsel shall not be returnable before 2 in the afternoon. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications. **Hours of returns.**

Order LIV.  
Rule 10.

37. Each summons, not being a summons for time only shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a master has jurisdiction to hear, from those which a master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended. **List of summonses.**

Order LIV.  
Rule 11.

38. The summonses in each list for hearing by a judge or master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out. If one party only appears such order as seems just may, on an affidavit of service, be made *ex parte*. An affidavit of non-attendance shall not be required or allowed. **Hearing of summonses.**

Order LIV.  
Rule 12.

39. An order shall be in the form H. 2 in the schedule hereto, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the judge or master by whom it is made. **Form of Order.**

Order LIV.  
Rule 13.

40. Written consents to orders and adjournments shall be filed at the Central Office. **Filing consents to orders and adjournments.**

Order LIV.  
Rule 14.

ORDER LV.

*Costs.*

41. Where a bond is to be given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the court. **Security for costs where given by bond.**

Order LV.  
Rule 3.

## APPENDIX C.

## ORDER LVII.

*Time.*

Enlargement  
of time by  
consent.

Order LVII.  
Rule 6a.

Service.

Order LVII.  
Rule 8.

42. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the court or a judge.

43. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week-day except Saturday shall be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall be deemed to have been effected on the following Monday.

## ORDER LIX.

*Effect of Non-compliance and Amendment.*

Amendment.

Order LIX.  
Rule 2.

44. The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings.

## ORDER LXA.

*Central Office.*

Seals of Central  
Office.

Order LXA.  
Rule 5.

45. The official seals to be used in the Central Office shall be such as the Lord Chancellor from time to time directs.

All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

Enrolment of  
deeds.

Order LXA.  
Rule 6.

46. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the enrolment department of the Central Office.

Judgments, &c.,  
not to be  
registered after  
2 p.m.

Order LXA.  
Rule 7.

47. The registrar of judgments shall not receive any memorandum of judgment, execution, *lis pendens*, order, rule, annuity, crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon.

Searches and  
certificates of  
search.

Order LXA.  
Rule 8.

48. The Clerk of Enrolments and each of the following Registrars, namely—

The Registrar of Bills of Sale,

The Registrar of Certificates of Acknowledgments of Deeds by Married Women, and

The Registrar of Judgments

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.\*

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\* As amended by Rules of the Supreme Court, May, 1880.



49. The masters shall be the registrar for the purposes of the Bills of Sale Act, 1878, and any one of the masters may perform all or any of the duties of the registrar.

50. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the Central Office.

Where this consent cannot be obtained the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.

51. No affidavit or record of the court shall be taken out of the Central Office without the order of a judge or master, and no subpoena for the production of any such document shall be issued.

52. Such variations shall be made in the forms prescribed by or under the Supreme Court of Judicature Acts, 1873, 1875, and 1877 as are requisite for giving effect to these Rules.

The additional forms contained in the schedule hereto shall be used in or for the purposes of the Central Office, with such variations as circumstances require.

The masters may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

APPENDIX C.

Registrars  
under Bills of  
Sale Act.

Order LXA.  
Rule 9.

Memorandum  
of satisfaction  
of bill of sale

Order LXA.  
Rule 10.

Restrictions on  
removal of  
documents  
from Central  
Office.

Order LXA.  
Rule 11.

Forms.  
Order LXA.  
Rule 12.

ORDER LXI.

*Sittings and Vacations.*

53. The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associates Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon.

Office hours.  
Order LXI.  
Rule 4c.

ORDER LXIII.

*Interpretation of Terms.*

60. In these Rules the expression "Central Office" means the Central Office of the Supreme Court of Judicature; and the expression "Master" means a Master of the Supreme Court of Judicature.

Interpretation  
of terms.  
Order LXIII.  
Rule 2.

In the Supreme Court of Judicature (Officers) Act, 1879, and in Order LX., the expression "Officer of the Supreme Court" shall mean any officer paid wholly or partly out of public money who is attached to the Supreme Court, the High Court of Justice, or the Court of Appeal, or to any judge of any of those courts, and is not an officer attached to the person of a judge, and removable by him at pleasure.

The term "these rules" as used in the Rules of the Supreme Court shall include any rules made in amendment of or addition to those rules.

## APPENDIX C.

*Rules of the Supreme Court.**(Costs.)*

Special case. 64. Order IV. of the additional Rules of the Supreme Court (Costs)  
Order IV. is hereby annulled.

Extension of 65. Rule 22 in the schedule to the additional Rules of the Supreme  
time. Court (Costs) is hereby annulled.

Rule 22a.

The costs of an application to extend the time for taking any proceedings shall, in the absence of an order by the court or a judge directing by whom they are to be paid, be in the discretion of the taxing master.

## SCHEDULE.

## NOTICES.

## B. 10a.

## NOTICE TO PRODUCE (GENERAL FORM).

In the High Court of Justice.

Division. 18 No.

Between

Plaintiff,

and

Defendant.

Take notice, that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly

Dated the                      day of                      18 .

To the above-named

h solicitor or agent

} (Signed)  
of  
agent for  
solicitor for the above-name d

B. 17.

APPENDIX C.

NOTICE OF MOTION.

In the High Court of Justice.

Division.

18

No.

Between

and

Plaintiff,

Defendant.

Take notice, that the Court will be moved

on day the day of 18  
at o'clock in the forenoon, or so soon thereafter as counsel  
can be heard, by

that

Dated the day of 18

(Signed)  
of  
agent for  
solicitor for the

To

B. 19.

NOTICE OF DISCONTINUANCE.

In the High Court of Justice.

Division.

18

No.

Between

and

Plaintiff,

Defendant.

Take notice, that the plaintiff hereby \*

†

Dated the day of 18

(Signed)  
of  
agent for  
solicitor for the plaintiff.

To

\* " Wholly  
discontinues  
this action,"  
or " with-  
draws so  
much of h  
claim in this  
action as  
relate to," &c  
† If not  
against all the  
defendants  
add " as  
against the  
defendant,"  
&c.

## APPENDIX C.

**B. 21.**

NOTICE OF CROSS-EXAMINATION OF DEONENTS AT TRIAL.

**In the High Court of Justice.**

Division.

18

No.

## Between

and

Plaintiff,

**Defendant.**

Take notice, that the \_\_\_\_\_ intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Signed) \_\_\_\_\_

(Signed)

agent for

of

solicitor for the

To

**THE SCHEDULE** above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit filed.

AFFIDAVITS.

**B. 24.**

**AFFIDAVIT OF SERVICE OF SUMMONS.**

In the High Court of Justice.

Division.

18

No.

## Between

and

Plaintiff,

**Defendant.**

of I

solicitor for the above-named  
make oath and say as follows:—

I did on the \_\_\_\_\_ day of \_\_\_\_\_ 18  
before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, serve  
the above-named \_\_\_\_\_

in this action with a true copy duly stamped of the summons hereto  
annexed marked A, by leaving it at the \_\_\_\_\_ of  
the said \_\_\_\_\_  
situate \_\_\_\_\_

with \_\_\_\_\_ there

Sworn at \_\_\_\_\_ }  
day of \_\_\_\_\_ this \_\_\_\_\_ 18  
Before me, \_\_\_\_\_ }  
This affidavit is filed on behalf of the \_\_\_\_\_

B. 25. (a)

AFFIDAVIT ON REGISTRATION OF BILL OF SALE.

In the High Court of Justice.  
Division. \_\_\_\_\_ 18 No. \_\_\_\_\_

I  
of \_\_\_\_\_  
make oath and say as follows:—

1. The paper writing hereto annexed and marked A is a true copy of  
a bill of sale, and of every schedule or inventory thereto annexed or  
therein referred to, and of every attestation of the execution thereof,  
as made and given and executed by \_\_\_\_\_

2. The said bill of sale was made and given by the said \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_ 18  
3. I was present and saw the said \_\_\_\_\_  
duly execute the said bill of sale on the said \_\_\_\_\_ day of  
18

4. The said \_\_\_\_\_  
resides at [state residence at time of swearing affidavit] and is [state  
occupation]

5. The name \_\_\_\_\_ subscribed  
to the said bill of sale as that of the witness attesting the due execution  
thereof is in the proper handwriting of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at \_\_\_\_\_

7. Before the execution of the said bill of sale by the said \_\_\_\_\_

I fully explained to  
the nature and effect thereof.

Sworn at \_\_\_\_\_ }  
the day of \_\_\_\_\_ 18  
Before me, \_\_\_\_\_ }

This affidavit is filed on behalf of \_\_\_\_\_

(a) *This form should be used only by the solicitor who attested the bill of  
sale, see FORD v. KETTLE ante p. 35.*

*A form of affidavit by another witness will be found post p. 104.*



Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of greeting : We command you, that of the goods and chattels of

APPENDIX C.

in your bailiwick you cause to be made the sum of

for certain costs which by an order of Our High Court of Justice dated the day of 18 were ordered to be paid by the said

to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of £4 per centum per annum from the day of 18, and that you have the said sum and interest before us in our said Court, immediately after the execution hereof, to be rendered to the said

And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of 18 .  
Levy £ and £ for costs of execution, &c., and also interest on £ at £4 per centum per annum from the day of 18, until payment ; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by  
of  
agent for of  
solicitor for the

The is a and resides  
at  
in your bailiwick.

F. 11

DELIVERY OR ASSESSED VALUE.

In the High Court of Justice.

Between	Division.	18	No.
			Plaintiff,
	and		Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of greeting. \* Enumerate chattels re-

We command you that without delay you cause to be returned to the return of which execu-  
the following judgment for tion has been  
chattels, namely\* ordered to  
which the said issue.

## APPENDIX C. lately \*

\* "Recovered in an action in our High Court of Justice.  
 against" or And we further command you that if the said chattels cannot be  
 "was ordered to deliver to the said." found in your bailiwick, then of the goods and chattels of the said  
 † The assessed value of the chattels. bailiwick you cause to be made £† . And in what manner  
 you shall have executed this our writ make appear to us in our said  
 Court immediately after the execution hereof. And have there then  
 this writ.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor  
 of Great Britain, the day of  
 in the year of our Lord One thousand eight hundred and .

If the chattels cannot be found in your bailiwick, levy £  
 the assessed value thereof, and interest thereon at £4 per centum per  
 annum, from the day of 18  
 until payment, besides sheriff's poundage, officers' fees, costs of levying,  
 and all other legal incidental expenses.

This writ was issued by  
 of  
 agent for  
 of  
 solicitor to the who reside at

The defendant is a  
 and reside at  
 in your bailiwick.

## G. 1.

## SUBPOENA AD TESTIFICANDUM (GENERAL FORM).

In the High Court of Justice.

Between Division. 18 No.

and  
 Plaintiff,  
 Defendant.

\* The names of three witnesses may be inserted. Victoria, by the Grace of God of the United Kingdom of Great  
 Britain and Ireland Queen, Defender of the Faith, to<sup>o</sup>

greeting : We command you to attend before  
 at  
 on day the day of 18 ,  
 at the hour of in the noon, and so from day to  
 † "Plaintiff" day until the above cause is tried, to give evidence on behalf of the†  
 or "Defen-  
 dant."

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of  
 Great Britain, the day of in the year of Our  
 Lord One thousand eight hundred and



G. 2.

APPENDIX C.

SUBPŒNA DUCES TECUM (GENERAL FORM).

In the High Court of Justice.

Division.

18

No.

Between

Plaintiff,

and

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, to<sup>o</sup>

\* The names of three witnesses may be inserted.

greeting : We command you to attend before

at

on

day the

day of

18 ,

at the hour of in the noon, and so from day to day

until the above cause is tried, to give evidence on behalf of the

and also to bring with you and produce at the

time and place aforesaid†

† Specify documents to be produced.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

G. 3.

SUBPŒNA AD TESTIFICANDUM AT ASSIZES.

In the High Court of Justice

Division.

18

No.

Between

Plaintiff,

and

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to<sup>o</sup>

\* The names of three witnesses may be inserted.

greeting : We command you to attend before our justices assigned to take the assizes in and for the county of to be holden

at

on

day the

day of

18 ,

at the hour of in the noon, and so from day to day

during the said assizes until the above cause is tried, to give evidence on behalf of the

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

## APPENDIX C.

## G. 4.

## SUBPENA DUCES TECUM AT ASSIZES.

In the High Court of Justice.

Division

18

No.

Between

Plaintiff,

and

Defendant.

\* The names  
of three wit-  
nesses may be  
inserted.

Victoria, by the Grace of God of the United Kingdom of Great  
Britain and Ireland Queen, Defender of the Faith, to<sup>o</sup>

greeting : We command you to attend before our Justices assigned to  
take the assizes in and for the county of to be holden  
at

on day the day of 18 ,  
at the hour of in the noon, and so from day to day  
during the said assizes, until the above cause is tried, to give evidence  
on behalf of the , and also

† Specify  
documents to  
be produced.

to bring with you and produce at the time and place aforesaid†

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor  
of Great Britain, the day of in the year of  
Our Lord One thousand eight hundred and

## G. 5.

## SUBPENA AD TESTIFICANDUM AT SITTINGS OF HIGH COURT.

In the High Court of Justice.

Division.

18

No.

Between

Plaintiff,

and

Defendant.

\* The names  
of three  
witnesses may  
be inserted.

Victoria, by the Grace of God of the United Kingdom of Great  
Britain and Ireland Queen, Defender of the Faith, to<sup>o</sup>

greeting : We command you to attend at the sittings of the  
Division of our High Court of  
Justice, for† to be holden  
at

† London or  
Westminster

on day the  
day of 18 , at the hour of in the noon,  
and so from day to day during the said sittings, until the above cause is  
tried, to give evidence on behalf of the

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor  
of Great Britain, the day of in the year of  
Our Lord One thousand eight hundred and

G. 6.

APPENDIX C.

SUBPENA DUCES TECUM AT SITTINGS OF HIGH COURT.

In the High Court of Justice.

Division.

18

No.

Between

Plaintiff,

and

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to<sup>a</sup>

\* The names of three witnesses may be inserted.

We command you to attend at the sittings of the Division of our High Court of Justice for†, to be holden at on day the day of 18, at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid‡

† London or Westminster.

‡ Specified documents to be produced.

Witness, HUGH MACCALMONT, EARL CAIRNS, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and

SUMMONSES AND ORDERS.

H. 1.

SUMMONS (GENERAL FORM).

In the High Court of Justice.

Division.

18

No.

Between

Plaintiff,

and

Defendant.

Let all parties concerned attend the Judge [or Master] in Chambers on day the day of 18, at o'clock in the noon, on the hearing of an application on the part of

Dated the

day of

18 .

This summons was taken out by solicitor for

of

To

## APPENDIX C.

## H. 2.

\* Insert name  
of judge or  
master.

## ORDER (GENERAL FORM).

In the High Court of Justice.  
Division. 18 No. .  
o Judge [or Master] in Chambers.  
Between  
and Plaintiff,  
and Defendant.  
Upon hearing , and upon reading the affidavit of  
filed the day of  
18 , and  
It is ordered  
and that the costs of this application be  
Dated the day of 18 .

---

## H. 14.

## ORDER FOR DELIVERY OF INTERROGATORIES.

In the High Court of Justice.  
Division. 18 No.  
Master in Chambers.  
Between  
and Plaintiff,  
and Defendant.  
Upon hearing  
and upon reading the affidavit of  
filed the day of 18 , and  
It is ordered that the be at liberty to deliver  
to the interrogatories in writing,  
and that the said do, within days from the  
date of this order, answer the interrogatories in writing by affidavit,  
and that the costs of this application be  
Dated the day 18 .

---

## H. 15.

## ORDER FOR AFFIDAVITS AS TO DOCUMENTS.

In the High Court of Justice.  
Division. 18 No.  
Master in Chambers.  
Between  
and Plaintiff,  
and Defendant.  
Upon hearing

It is ordered that the do, within days **APPENDIX C.**  
 from the date of this order, answer on affidavit stating what documents  
 are or have been in possession or power relating to the matters  
 in question in this action, and that the costs of this application be

Dated the day of 18 .

H. 16.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

In the High Court of Justice.  
 Division. 18 No.  
 Master in Chambers.

Between Plaintiff,  
 and Defendant.

Upon hearing  
 and upon reading the affidavit of  
 filed the day of 18 , and

It is ordered that the do, at all seasonable times, on  
 reasonable notice, produce at the office of solicitor,  
 situate at the following documents, namely  
 and that the be at liberty  
 to inspect and peruse the documents so produced, and to take copies  
 and abstracts thereof and extracts therefrom, at  
 expense, and that in the meantime all further proceedings be stayed,  
 and that the costs of this application be

Dated the day of 18

H. 34.

ORDER FOR EXAMINATION OF WITNESSES BEFORE TRIAL.

In the High Court of Justice.  
 Division. 18 No.  
 Master in Chambers.

Between Plaintiff,  
 and Defendant.

Upon hearing  
 and upon reading the affidavit of  
 filed the day of day of 18 , and

It is ordered that a witness on behalf  
 of the be examined *vivâ voce* (on oath or affirmation)  
 before one of the Masters of the Supreme Court of Judicature [or  
 before esquire, special examiner], the  
 solicitor or agent giving to the solicitor or agent  
 notice in writing of the time and place where the  
 examination is to take place.



It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff], and that the costs of this application be

Dated the                      day of                      18 .

H 49.

INTERPLEADER ORDER, No. 2.

In the High Court of Justice  
 Division. 18 No.  
 Master in Chambers.

Between \_\_\_\_\_ Plaintiff,  
and \_\_\_\_\_ Defendant,  
and \_\_\_\_\_ Claimant.

Upon hearing  
and upon reading the affidavit of  
filed the                      day of                      18   , and

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be

Dated the            day of            18 .

Н. 50.

INTERPLEADER ORDER, No. 3.

In the High Court of Justice.

Division.	18	No.
Master in Chambers.		

Between  
,  
and  
and between  
and the said  
the sheriff of

Plaintiff,  
Defendant,  
Claimant,  
execution creditor, and  
Respondents.

Upon hearing  
and upon reading the affidavit of  
filed the                      day of                      18                      , and

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of fieri facias issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

**APPENDIX C.** And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the                      day of                      18

#### H. 51.

#### INTERPLEADER ORDER, No. 4.

In the High Court of Justice.

Division.                      18                      No.  
Master in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant,

and the said  
the sheriff of

execution creditor, and

Respondents.

Upon hearing

and upon the reading the affidavit of  
filed the                      day of

18                      , and

It is ordered that upon payment of the sum of £                      into Court by the said claimant within                      from this date, or upon his giving within the same time security to the satisfaction of one of the Masters of the Supreme Court for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the



question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor. APPENDIX C.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within \_\_\_\_\_ from this date, and be returned by the defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

H. 52.

INTERPLEADER ORDER, No. 5.

In the High Court of Justice.

Division. 18 No.  
Master in Chambers.

Between

and

Plaintiff,

Defendant,

and between

Claimant,

and the said execution creditor, and  
the sheriff of

Respondents.

Upon hearing  
and upon reading the affidavit of  
filed the \_\_\_\_\_ day of

18 , and

It is ordered that upon payment of the sum of £ \_\_\_\_\_ into Court by the said claimant, or upon his giving security to the satisfaction of one of the Masters of the Supreme Court for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of fieri facias issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

**APPENDIX C.** And it is further ordered that this issue be prepared and delivered by the plaintiff therein within \_\_\_\_\_ from this date, and be returned by the defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the                      day of                      18                      .

**Н. 53.**

**INTERPLEADER ORDER, No. 6.**

In the High Court of Justice.		18	No.
	Division		
	Master in Chambers.		
Between			Plaintiff,
	and		Defendant,
	and between		Claimant,
and the said	execution creditor and		Respondents.
the sheriff of			

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing  
and upon reading the affidavit of  
filed the                      day of                      18 , and

**It is ordered that**

And the costs of this application be

Dated                      day of                      18   .

**H. 54.**

INTERPLEADER ORDER, No. 7.

In the High Court of Justice.		18	No.
	Division.		
	Master in Chambers.		
Between			Plaintiff,
	and		Defendant,
	and between		Claimant,
and the said	execution creditor and		Respondents.
the sheriff of			

Upon hearing  
and upon reading the affidavit of  
filed the day of 18 , and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the day of 18 .

H. 55.

ORDER DISMISSING SUMMONS (GENERALLY).

In the High Court of Justice.  
Division. 18 No.  
Master in Chambers.  
Between  
and Plaintiff.  
Defendant.

Upon hearing  
and upon reading the affidavit of  
filed the day of 18 , and

It is ordered that the application of  
be dismissed\* with costs to be taxed and paid by the  
to the

Dated the day of 18

\* If the dismissal is with costs add these words.

H. 56.

SUMMONS FOR ENTRY OF SATISFACTION ON A REGISTERED BILL OF SALE.

In the High Court of Justice.

In the matter of a bill of sale by  
to  
dated the day of 18 and registered  
on the day of 18

**APPENDIX C.** Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the \_\_\_\_\_ hearing of an application on the part of \_\_\_\_\_ that satisfaction be entered on the above-mentioned bill of sale.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

This summons was taken out by

of

To

## ADDITIONAL FORMS.

**I.—AFFIDAVIT OF EXECUTION OF A BILL OF SALE WHERE THERE ARE TWO ATTESTING WITNESSES, ONE NOT BEING A SOLICITOR.**

*(As required by the Act of 1878.)*

188

No.

In the High Court of Justice.  
Queen's Bench Division.

I,  
of

make oath and say as follows :—

1. That the paper writing hereunto annexed marked **A** is a true copy of a bill of sale, and of every attestation of the execution thereof, and that the said bill of sale was made and given and executed on the day it bears date, being the \_\_\_\_\_ day of \_\_\_\_\_ by one thousand eight hundred and eighty \_\_\_\_\_

in the presence of me this deponent and

\* Fully describe the Solicitor.

of \_\_\_\_\_ the attesting Solicitor.

2. That I and the said \_\_\_\_\_ were both present and did see the said \_\_\_\_\_ in the said bill of sale mentioned, and whose name is signed thereto, duly sign, seal and deliver and duly execute the same on the said \_\_\_\_\_ day of \_\_\_\_\_ in the year aforesaid.

3. That the said \_\_\_\_\_ is a \_\_\_\_\_ and resides at \_\_\_\_\_

4. That the said bill of sale was duly attested in my presence by the said \_\_\_\_\_ the attesting Solicitor thereto who before its execution by the said \_\_\_\_\_

explained to \_\_\_\_\_ in my presence the nature and effect thereof.

5. That the names

APPENDIX C.

set and subscribed as the witnesses attesting the due execution of the said bill of sale, are respectively of the proper handwriting of me this deponent and of the said and that I reside at and am and that the said

resides at and is a Solicitor of the Supreme Court of Judicature, and that the said and me this deponent, are the only attesting witnesses to the said bill of sale.  
Sworn at }  
this }  
day of 188 }  
Before me,

A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

II. AFFIDAVIT BY ONE OF TWO WITNESSES TO THE EXECUTION OF A BILL OF SALE UNDER THE ACT OF 1882 (a).

In the High Court of Justice.  
Queen's Bench Division.

I  
of  
make oath and say as follows :  
1. The paper writing hereto annexed and marked A is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by  
2. The said bill of sale was made and given by the said  
on the day of One thousand eight  
hundred and  
3. I was present and saw the said  
on the said day of duly execute the said bill of sale  
hundred and One thousand eight  
4. The said  
resides at  
and is  
5. I am one of the attesting witnesses to the said bill of sale, and the name  
subscribed to the said bill of sale as that of one of the witnesses attesting the due execution thereof is in the proper handwriting of me this deponent, and I reside at  
and am a

(a) If there be only one witness, omit after the word "me" of paragraph 6.

**APPENDIX C.** 6. The execution of the said bill of sale by the said \_\_\_\_\_ was duly attested by me and \_\_\_\_\_ who resides at \_\_\_\_\_ and who is a \_\_\_\_\_ and whose name also appears as one of the attesting witnesses thereto.  
 Sworn at \_\_\_\_\_  
 the \_\_\_\_\_ day of \_\_\_\_\_  
 One thousand eight hundred and eighty- }  
 Before me, \_\_\_\_\_  
 A Commissioner to administer oaths in the Supreme Court of  
 Judicature in England.  
 This affidavit is filed on behalf of \_\_\_\_\_

### III.—AFFIDAVIT RE-REGISTERING BILL OF SALE.

In the High Court of Justice,  
 Queen's Bench Division.

I  
 of \_\_\_\_\_

make oath and say : That a Bill of Sale bearing date the \_\_\_\_\_ day of \_\_\_\_\_ One thousand eight hundred and \_\_\_\_\_, and made between \*

\* Insert  
 names, &c.,  
 of parties as  
 in bill of sale.

† When the original has been filed, the words " a copy of " must be struck out. and † a copy of which said Bill of Sale was filed in the Bills of Sale Department of the Queen's Bench Division of the High Court of Justice, on the \_\_\_\_\_ day of \_\_\_\_\_ One thousand eight hundred and \_\_\_\_\_

is still a subsisting security.

If previously registered, Sworn at \_\_\_\_\_

insert "and this \_\_\_\_\_

which was re- day of \_\_\_\_\_  
 registered under the 18 }  
 Bills of Sale  
 Act, 1866, on  
 the day of  
 18 ."

Before me, \_\_\_\_\_

A Commissioner to administer Oaths in the Supreme Court of  
 Judicature in England.

### IV.—AFFIDAVIT AND CONSENT TO ENTER SATISFACTION ON BILL OF SALE.

In the High Court of Justice.  
 Queen's Bench Division.

I  
 Solicitor of the Supreme Court of Judicature, make oath and say as follows :—

1. That the Debt, Interest, and Costs for which the Bill of Sale dated the \_\_\_\_\_ day of \_\_\_\_\_ One thousand \_\_\_\_\_

## APPENDIX D.

**A Solicitor of the Supreme Court of Judicature.**

## PRECEDENTS OF BILLS OF SALE.

THIS INDENTURE made the day  
of One thousand eight hundred  
and between of of  
the one part and of of the  
other part witnesseth that in consideration of the sum of £  
now paid to by the  
receipt of which the said hereby acknowledges,  
the said doth grant, bargain, sell and assign  
unto the said his executors, administrators and  
assigns all and singular the several chattels and things specifically  
described in the schedule hereunder written or hereunto annexed.  
Together with all the right, title, interest, property, claim and demand  
whatsoever both at law and in equity of him the said  
of in or to the same and every  
or any of them respectively To have hold take and enjoy the said

**APPENDIX D.** several chattels and things And all and singular the premises hereby bargained, sold and assigned or intended so to be with their appurtenances unto the said his executors, administrators, and assigns for his and their own absolute use and benefit without any let, suit, hindrance, disturbance, claim, or demand whatsoever of from or by any person or persons whomsoever. And the said doth hereby for himself, his heirs, executors and administrators warrant and defend from time to time, and at all times hereafter covenant and agree to warrant and defend all and singular the said chattels and things hereby bargained, sold and assigned unto the said his executors, administrators and assigns against all persons whomsoever, and of which said chattels and things the said hath this day put the said into actual possession by delivering unto him a in the name of the whole thereof. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered by the  
said

in my presence

(Name)

(Address)

(Occupation)

Received the day and year first  
above written of and from the  
above-named

the sum of

being the consideration money  
above mentioned to be paid by  
him to me.

THE SCHEDULE HEREINBEFORE REFERRED TO.

## II.—ABSOLUTE BILL OF SALE IN CONSIDERATION OF PAST AND PRESENT ADVANCES.

THIS INDENTURE made the day of between  
one thousand eight hundred and of the one part and  
of of the other part witnesseth that  
in consideration of the sum of £ in which the said  
is now indebted to and in further consideration  
of the sum of £ now paid to  
by the receipt of which the said  
hereby acknowledges the said doth grant  
bargain and sell [and so on the same as precedent I. down to the receipt].

Received the day and year first above written of and  
from the above-named the sum of  
being the consideration money above  
mentioned to be now paid by him to me which together } £  
with the sum of already due from me  
to the said makes up the total considera-  
tion hereinbefore mentioned.

THE SCHEDULE HEREINBEFORE REFERRED TO.



III.—BILL OF SALE BY WAY OF MORTGAGE IN CONSIDERATION OF  
A PRESENT ADVANCE.

APPENDIX.

THIS INDENTURE made the                      day of  
one thousand eight hundred and                      between  
                    of                      of the one part and  
of                      of the other part witnesseth that in consideration  
of the sum of £                      now paid to                      by  
the receipt of which the said                      hereby acknowledges, the  
said                      doth hereby assign unto                      his  
executors, administrators, and assigns All and singular the several  
chattels and things specifically described in the schedule hereto annexed,  
the said chattels and things now being in and about the premises and  
dwelling-house known as                      by way of  
security for the payment of the sum of £                      and the further  
sums hereinafter provided to be paid by the said                      to  
the said                      and interest thereon at the rate of                      per  
cent. per<sup>o</sup>                      And the said                      doth \* Annum,  
hereby further agree and declare, that he will duly pay to the said                      month, &c.  
                    the principal sum aforesaid, together with the  
interest then due by equal<sup>†</sup>                      payments of £                      † Yearly,  
on the                      day of †                      such payments to be monthly, &c.  
made between the hours of                      of the clock in the forenoon and  
                    of the clock in the afternoon on the aforesaid days,                      † Month, &c.  
(unless any of the said days happen to be a Saturday, then and in that  
case the payment shall be made before                      of the clock in the  
afternoon of that day, or if it happen to be a Sunday or any other day  
on which banks are or may be usually closed for business, then and in  
that case the payment shall be made before                      of the clock in  
the afternoon of the previous day, or on such other extended days as  
may from time to time be agreed upon by the said                      in  
writing). And it is further agreed and declared between the said  
                    and the said                      that if the said  
shall make default of payment of any one of the instalments at the  
times aforesaid, he will duly pay to the said                      the whole  
amount then remaining due and unpaid under these presents on the day  
immediately after his having made such default, together with all costs,  
payments, charges, damages and expenses hereinafter mentioned And  
the said                      doth also agree with the said                      that  
he will pay the rent, rates, taxes or other impositions whatsoever  
payable in respect of the said dwelling-house or any other premises in  
or about which the said chattels and things shall happen to be, and also  
the premiums for insuring or keeping on foot the insurance of the said  
chattels and things from fire in the sum of                      pounds, as and  
when the same shall become payable, and will forthwith after every  
payment, produce and deliver to the said                      the receipts  
for the same And also will so long as any moneys shall remain unpaid  
on the security of these presents, preserve and keep the said chattels  
and things whole, safe and uninjured, reasonable use thereof only  
excepted. And it is hereby declared and agreed by and between the  
said                      and the said                      that if the said  
                    shall at any time pay the said premium of insurance,  
or any rent, rates, taxes or other charges or incumbrances whatsoever  
affecting or attaching to the said chattels and things, or any of them (and  
he shall be at liberty to do so if he shall think fit), the said  
                    shall be entitled to add every such payment to the sum  
hereby secured, and shall have and be entitled to have the same

## APPENDIX.

remedies in all respects for the payment and recovery thereof as are hereinafter provided with regard to and as if such payment had originally constituted an integral part of the said advance And also that in case the said shall make default in the payment of the

sum or sums hereby secured or any part thereof at the time or in the manner hereinbefore provided for payment thereof as aforesaid, or that he shall do or suffer any matter or thing whereby he shall render himself liable to become bankrupt, or suffer the said chattels and things or any of them to be distrained for rent, rates, or taxes, or that he shall remove or suffer the said chattels and things or any of them to be removed from the premises or dwelling-house, or that he shall not without reasonable excuse upon demand in writing by the said produce to him his last receipts for the rent, rates, and taxes or premiums for insurance as aforesaid, or if execution shall be or

shall have been levied against the goods of the said under any judgment at law, or if he shall make default in the performance of any of the covenants herein contained, or commit any breach thereof, Then and in any such case or cases it shall be lawful for the said

his servants or agents forthwith, or when and as the said shall think fit, without any previous notice or demand—verbal, written, or otherwise—to enter into and upon the said dwelling house, messuages, lands, tenements, or other premises in or about which the said chattels and things or any of them shall happen to be, and to seize and take possession of the whole or any part of the same, and after taking possession thereof to relinquish and again take possession thereof as often and whenever he shall think fit, or if the said shall so think fit to retain and keep possession of the whole or any part of the said chattels and things and for that purpose put and continue a man or so many men as he shall think fit in possession thereof in and upon the said dwelling-house or premises or elsewhere without this security being thereby invalidated or rendered void or voidable, or if the said

shall so think fit, after the expiration of five clear days from the day of such taking possession and seizure, to sell the whole of the said chattels and things or any part thereof which shall be found in and upon the said dwelling-house or any other premises in or about which the same shall happen to be, or to remove them to any other premises and sell the same or any part thereof when and as he shall think fit, either on the premises where the same may be without removal, or otherwise by public auction or private contract, together or in lots, for such price or prices as can be obtained for them, or to have them valued by a licensed appraiser and to purchase them at such valuation, and hold the moneys to arise from such sale or valuation upon trust in the first place to reimburse himself the sum remaining due upon security of these presents (including all payments, damages, costs, charges herein agreed or declared to be included herein) or so much thereof as shall remain unpaid, and in the next place (or in the first place if he shall so think fit) to pay all or any charges or incumbrances whether rents, rates, or taxes, or any other account whatsoever which shall effect or attach to the said chattels and things or any of them, or the premises in or about which the same shall happen to be, and to pay over the surplus (if any) to the said

and the receipts of the said alone for all or any moneys payable or receivable under these presents shall be sufficient discharges to purchasers or others, and all persons paying the same shall be exempted from seeing to the application thereof. And that for the purposes of a sale, or for preserving his security or his title thereto, or for any other purpose whatsoever the said his executors, or assigns, or his agents may at any time affix such bills and placards as he or they may think fit on the premises of the said

, or wherever the said chattels or things or any of them may be, or be supposed to be. And the said doth hereby covenant and declare with and to the said

in the manner following (that is to say), that all costs, charges, damages, payments and expenses incurred, made, or sustained by the said

, in and about entering upon the said premises, and seizing, taking, retaining, and keeping possession of the said chattels and things, or any part thereof (including a fee on taking possession at the rate of five pounds per centum upon the whole sum, or amount then due and secured by these presents, and including all travelling expenses, and a charge of five shillings per day for each man during such time as a man or so many men as the said

, his executors, administrators, or assigns shall think fit shall be continued in possession as aforesaid), and in and about the carriage, removal, warehousing, valuing, or sale (including the costs of inventories, catalogues, and advertising) of the said chattels and things, or any part thereof, and in and about the exercise by the mortgagee of all or any of the powers, rights, remedies herein contained, or in relation or incident thereto, and in and about the prosecution, defence, or maintenance at law or otherwise of the claim of the said

to and mortgage on the said chattels and things, or any of them, or in relation or incident thereto, shall be added to and form a part of the sum hereby intended to be secured, and until satisfaction thereof, together with all costs, charges, payments, damages, and expenses as aforesaid, the same shall be deemed to be a charge upon the said chattels and things, and the said

shall have the same powers, rights, and remedies in all respects for the repayment and recovery thereof as are herein provided with regard to and as if such costs, charges, payments, damages, and expenses had originally constituted an integral part of the advance That the said

shall not remove, or permit, or suffer to be removed the said chattels and things or any of them from the said dwelling-house or premises without the previous consent in writing of the said

That it shall be lawful for the said

, his servants or agents, when and as often as he shall think fit, without any previous notice whatever, to enter as aforesaid the dwelling-house or premises, or any other premises in or about which the said chattels and things or any of them shall happen to be, to search and see that the same respectively are safe and uninjured, and to make schedules thereof That in case the moneys arising from the said sale or valuation hereinbefore-mentioned shall not be sufficient to pay and discharge the amount remaining unpaid, including the payments, costs, charges, damages and expenses as aforesaid, then that the said

shall make good the deficiency on request That the said is absolutely and legally possessed of the said chattels and things hereby assigned, and has lawful power and authority to assign the same free from

incumbrance That the same are not now charged or incumbered in any manner That these presents shall not be affected or prejudiced in any way by the removal of the said chattels and things, or any of them, from the said dwelling-house or premises to any other premises, and that notwithstanding any such removal the same shall be and continue in full force and virtue as regards the said chattels and things hereby expressed to be hereby assigned That the said

has not within six calendar months next before the date of these presents committed or suffered an act of bankruptcy, nor any act, matter, deed, omission, or thing which would render him liable to be adjudicated a bankrupt. Provided always that the chattels hereby

**APPENDIX.** assigned shall not be liable to seizure or to be taken possession of by the said for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed, sealed and delivered by the said in the presence of me<sup>o</sup>  
 Received from the above-named on the day }  
 and year above-mentioned, the sum of £ being the consideration for the foregoing bill of sale. } £

THE SCHEDULE HEREINBEFORE-MENTIONED.

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**IV.—BILL OF SALE, INCLUDING FIXTURES, &c., BROUGHT ON PREMISES AFTER THE DATE OF THE BILL OF SALE, IN SUBSTITUTION FOR THE LIKE MENTIONED IN THE SCHEDULE.**

THIS INDENTURE made the day of one thousand eight hundred and between of the one part and of the other part, witnesseth that in consideration of the sum of £ now paid by the receipt of which the said acknowledges, he the said doth hereby assign unto the said his executors, administrators, and assigns, the several chattels and things specifically described in the schedule hereto annexed, the said chattels and things being now in upon and attached to and also any fixtures, plant, or trade machinery which may hereafter be used in, attached to, or brought upon the said in substitution for any of the like fixtures, plant, or trade machinery specially described in the said schedule by way of security for the payment of [and so on the same as in precedent III].

---

**V.—BILL OF SALE BY WAY OF MORTGAGE OF GROWING CROPS.**

[Commencement same as precedent III. or IV.] All and singular the crops now actually growing in and upon (give full description) [and so on as in precedent III.]

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**VI.—BILL OF SALE TO SECURE PAST AND PRESENT ADVANCES.**

THIS INDENTURE made the day of one thousand eight hundred and between of the one part and of the other part, witnesseth that in consideration of the sum of £ which is now due and owing to the said from the said and in further consideration of the sum of £ now paid to by the receipt of which

the said hereby acknowledges, he the said **APPENDIX.**  
doth hereby assign, &c. [*and so on the same*  
*as in precedent III. down to the receipt at the end which should be as*  
*follows*].:—

Received from the above-named  
on the day and year before-mentioned as the date of  
these presents the sum of £ the part of the  
consideration which is above stated to be now paid to } £  
me and which together with the sum of £  
already owing from me to the said  
makes up the total consideration above-mentioned.

THE SCHEDULE ABOVE-MENTIONED.

VII.—BILL OF SALE TO SECURE PRESENT AND FUTURE ADVANCE.

[*Same as precedent III. down to end of proviso against seizure in cases*  
*other than those mentioned in section seven of the Act of 1882.*]

And it is declared and agreed that the said  
may, if he think fit, make any further advance or advances to the  
said on the security of these presents,  
not exceeding in the whole the sum of  
which further advance or advances shall be subject to all the provisos  
conditions and covenants therein contained; and, in case of any such  
further advance or advances being made, the same, and also the interest,  
costs and expenses connected therewith shall be considered as an  
integral part of the before-mentioned advance, and the goods, chattels  
and effects hereby expressed to be hereby assigned shall be charged  
with payment thereof equally as the said advance, and the same shall  
not be redeemed or redeemable without payment of such further  
advance or advances, interest and expenses And it is further agreed  
that notwithstanding the sum or sums hereby secured may have been  
fully, paid and satisfied, the said shall be entitled to retain  
possession of these presents, first, however, cancelling the same. In  
witness whereof the said parties hereto have hereunto set their hands  
and seals the day and year first above written.

Signed and sealed by the said in  
presence of me.

(*Add witness's name, address and description.*)

THE SCHEDULE HEREINBEFORE REFERRED TO.

VIII.—BILL OF SALE TO SECURE PAST, PRESENT, AND FUTURE ADVANCES.

[*Same as precedent VI., inserting after the proviso of the Act of 1882*  
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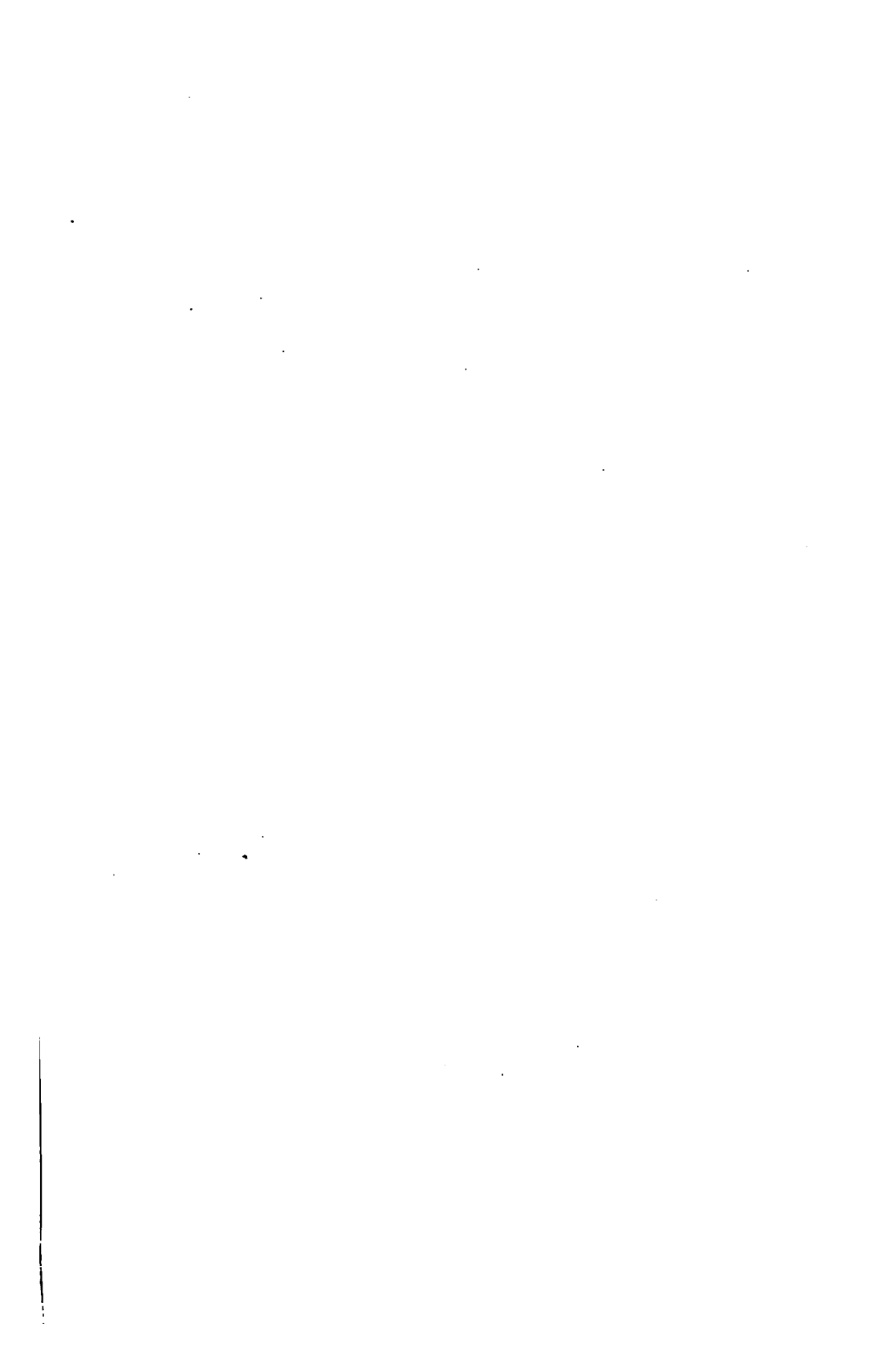
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